EMPLOYMENT TRIBUNALS

Claimant: Ms. F Baksh

Respondent: (1) Advanced Markets (UK) Limited
(2) Mr. A.P. Brocco

Heard at: London South via CVP On: 16- 20 and 21&22 September 2024

Before: Employment Judge Mclaren
Members: Ms. F Whiting
Ms. N Beeston

Representation

Claimant: Mr. P Gilroy, KC
Respondent: Ms. C Darwin, KC

JUDGMENT

The unanimous decision of the employment tribunal is as follows: –

1. **The complaint of ordinary unfair dismissal is well-founded. The claimant was unfairly dismissed for conduct.**
2. **The claimant caused or contributed to dismissal by blameworthy conduct and it is just and equitable to reduce the compensatory award payable to the claimant by 100%. It is just and equitable to reduce the basic award payable to the claimant by 100% because of the claimant's conduct before the dismissal.**
3. **The complaint of automatic unfair dismissal is not well-founded.**
4. **None of the complaints of being subjected to detriment for making a protected disclosure are well-founded and they are all dismissed.**

REASONS

Evidence

1. We heard evidence from the claimant on her own behalf and from Geoffrey Gooch, Remonda Kirketerp-Moller, Ahmed Atteya, Michael Cairns, Irene Kambouris, Anthony Brocco, Sunita Mistry and Peter

Halloway-Churchill for the respondents. We were provided with an agreed chronology, a list of agreed facts and a final hearing bundle of 1301 pages. We were also provided with written submissions from both counsel.

2. The findings of fact set out below were reached by the tribunal, on a balance of probabilities, having considered all the evidence given by witnesses during the hearing, including the documents referred to by them, and taking into account the tribunal's assessment of the witness evidence.
3. Only findings of fact relevant to the issues, and those necessary for the tribunal to determine, have been referred to in this judgment. It would not be necessary, and neither would it be proportionate, to determine each and every fact in dispute. If the tribunal has not referred to every document it has read and/or was taken to in the findings below, that does not mean it was not considered if it was referred to in the witness statements/evidence.
4. During the hearing the claimant became unwell and we adjourned for half a day to allow the claimant to recover and to seek medical advice. On her return to the tribunal she confirmed that she was well enough to continue and wish to do so. We agreed that we will provide additional breaks throughout the rest of the hearing. It is partly for this reason that the decision had to be reserved.

Claims

5. The claimant is bringing claims of whistleblowing detriment, automatic unfair dismissal and ordinary unfair dismissal. The claimant was employed by the first respondent which operates in the area of financial services, as Managing Director and Head of Compliance. The first respondent is regulated by the FCA. The claimant was dismissed with effect from 21 August 2022.
6. The claim is about the deterioration of the working relationship between the claimant and her employer. The whistleblowing elements of the claims relate to regulatory issues the claimant says she raised with the respondent's and the ultimate termination of her employment.
7. The issues had been largely agreed between the parties prior to the hearing. While the tribunal began reading the relevant documents the parties were able to agree the remaining issues which are set out below. The numbering of the issues list and the foot notes have been retained for ease of reference.

The agreed issues

1. The Claimant was employed as Managing Director and Head of Compliance at the First Respondent from 1 July 2018. The Claimant was dismissed with effect from 21 August 2022.

2. The claim was presented on 17 June 2022. ACAS notifications were received on 13 April 2022 (in relation to the First Respondent) and 12 May 2022 (in respect of the Second Respondent) and ACAS certificates issued on 24 May 2022 (in respect of the First Respondent) and 7 June 2022 (in respect of the Second Respondent).

3. The Claimant is bringing the following claims:

    a) Whistleblowing detriment (s 47B ERA 1996);

    b) Automatic Unfair Dismissal (s103A ERA 1996); and

    c) Ordinary Unfair Dismissal (s98 ERA 1996).

Whistleblowing Detriment

4. The Claimant relies on four categories of alleged Protected Disclosures. In relation to each:

First Alleged Protected Disclosure

    a) Did the Claimant say or write the following things:

        i) At a meeting on 30 January 2022:(*it is agreed this was the 25 January)*

            (1) That the First Respondent's regulatory structure was insufficient with regard to providing the relevant protections and requirements that apply to retail clients, irrespective of whether the retail client is an individual or a corporate;

            (2) That if the Claimant and the First Respondent proceeded as she alleges she had been asked (that the UK team should undertake the processing of new applications in respect of corporate clients (especially those classified as 'retail') on behalf of the Bermuda entity), this could lead to a conflict of interest and it would therefore be a breach of the First Respondent's regulatory licensing conditions;

        ii) By email to the Second Respondent on 31 January 2022:

            (1) State that there would be a serious regulatory issue if the First Respondent acted as the Second Respondent had directed;

        iii) During a phone call on 31 January 2022:(it is agreed this call was on the 3 February)

            (1) Reiterate that the First Respondent would not open any retail clients, but that it could assist with training any staff members from other group entities.

    b) If so, did the Claimant thereby disclose information?

    c) If so, did the Claimant reasonably believe that information tended to show that:

i) The First Respondent was likely to fail to comply with its regulatory, and therefore legal, obligations if the Claimant and the First Respondent carried out the instructions of the Second Respondent in relation to the onboarding of clients; and/or

ii) A criminal offence was likely to be committed, in that she was being asked to commit a criminal offence in breach of s.19 of the Financial Services and Markets Act 2000.

d) Did the Claimant make the disclosures in good faith?[1]

Second Alleged Protected Disclosure

e) Did the Claimant say or write the following things:

i) During a telephone conversation on 2 February 2022:
   1. Raise her concerns in respect of potential a breach of bribery rules, in relation to the alleged gifting of a holiday by the Second Respondent to a client, which would be in breach of the First Respondent's regulatory and legal obligations and would potentially constitute criminality;
   2. Inform the Second Respondent that she wanted clarification on the sequence of events that had occurred and the reasons supporting the decisions made to ensure that correct procedures had been followed and no anti-bribery rules had been broken;
   3. Remind the Second Respondent that as a director of an FCA regulated firm, he was aware of the rules regarding gifting, which she had explained to him on previous occasions, and in respect of which he had undertaken regular online regulatory training.
   4. Explain that correct anti-bribery procedures must be followed and that any gifts received or given would need to be recorded in on the First Respondent's gift register. She asked for receipts, proof of money transfers and any documents related to the gifting and explained that due to the value of the gift it was most likely that the gift would need to be recorded.

ii) By email on 3 February 2022 – the Claimant sent "an official email in relation to what had been discussed" on the telephone call on 2 February 2022.

f) If so, did she thereby disclose information?

g) If so did she reasonably believe that information tended to show that:

i) the First and Second Respondent were failing to comply, or were likely to fail to comply with a legal obligation to which they were subject, namely the failure to register and disclose the money paid to a client as a gift for regulatory purposes; and/or

[1] The Respondent acknowledges that this is not required in order for a disclosure to amount to a protected disclosure, but it is an issue between that parties, which goes to questions of remedy.

h) that a criminal offence had taken place, in the form of bribery within the meaning of the Bribery Act 2010.

i) Did the Claimant make the disclosures in good faith?

Third Alleged Protected Disclosure

j) Did the Claimant say or write the following things:
    i) By telephone on 2 February 2022:
        1. Say that she was aware of a sensitive document that contained information about the First Respondent's new shareholder, Mushegh Tovmasyan, tending to show that a class action for fraud had been brought against him in a non-UK jurisdiction.
        2. Recommend that an allegation of this magnitude needed to be reported to the FCA.
        3. In a later telephone conversation, point out to the Second Respondent that the document she had seen did not refer to any other persons apart from Mr Tovmasyan (which was tantamount to contending that she did not believe that the answer given by Mr Tovmasyan in a prior call with the Second Respondent (namely that the civil suit in question did not involve Mr Tovmasyan but his business partner) was true,);
        4. Inform the Second Respondent that the class action against Mr Tovmasyan was dated 20 August 2021, so after he had been approved by the FCA in April 2021, and accordingly the FCA may not have been aware of the document's existence;
        5. Reiterate that it was their duty to notify the FCA of the accusation, especially since the First Respondent may undergo another change in controller;

    ii) By email on 3 February the Claimant send details of the conversation she had had with the Second Respondent by telephone on 2 February 2022.

k) If so, did she thereby disclose information?

l) If so did she reasonably believe that information tended to show that the First Respondent was failing to comply with a legal obligation to which it was subject, namely:

    i) failing to notify the FCA concerning a claim of fraud that, in her reasonable belief, had been brought against a major shareholder of the First Respondent in a foreign jurisdiction;

    ii) SUP 11.8 Changes in Circumstances of Existing Controllers;

    iii) that information that tended to show that the First Respondent was failing to comply with a legal obligation to which it was subject was being deliberately concealed; and/or

    iv) several FCA Principles for Business, namely: Principle 1 – Integrity; Principle 2 – Skill, Care and Diligence; Principle 3 –

Management and Control; Principle 11 – Relations with Regulators.

m) Did the Claimant make the disclosures in good faith?

Fourth Alleged Protected Disclosure

n) Did the Claimant do the following things:

i) ask the group's CEO on 3 February 2022, who she should contact to rectify some critical errors in the First Respondent's website;

ii) ask the First Respondent's Head of Onboarding on 3 February 2022asked to assist her in carrying out a thorough review of the website and how the UK section was positioned to ensure that the information presented on the website was correct and appropriate;

iii) on 3 February 2022, email the Second Respondent and explain the issues that she had found with the website, stating that if no immediate action was taken, the website could be deemed to be misleading clients and could have detrimental effects on UK clients and that the FCA could issue actions against the UK entity should a potential client complain or the FCA visit the site and identify the errors;

iv) On 3 February 2022, email the Second Respondent again, stating that corporate and individual clients can be both retail or professional, that decisions are based during the onboarding process where the First Respondent undertakes an appropriateness check to determine whether the client qualified under the MiFID rules, and if the client qualifies (whether corporate or individual), then they are approved as a client of the UK entity; and/or

v) On 10 February 2022, in an email to the Second Respondent, she state that the UK team should have been included in any meetings or discussions relating to the UK website to avoid these situations ever occurring, and observed that had she not carried out a search, then the First Respondent and group would have been oblivious to the errors and clients may have been diverted to an inappropriate entity (whether by intention or accident).

o) If so, did she thereby disclose information?

p) If so did she reasonably believe that information tended to show that the First Respondent was failing to comply with a legal obligation to which it was subject, namely:

i) FCA regulation concerning onboarding clients via a UK and FCA regulated entity;
ii) In particular, FCA's Principles for Business, Principle 5 – Market Conduct; Principle 6 – Customers Interests; Principle 7 –

Communications with Clients; Principle 8 – Conflicts of Interests, and Principle 9 – Customers Relationships of Trust.

q) Did the Claimant make the disclosures in good faith?

5. Did the Respondents do (or omit to do) the following things to the Claimant:

a) Did the First and Second Respondent undermine her role in a telephone call on 31 January 2022 (this is 3 February) in relation to the First Alleged Protected Disclosure (paragraph 19 of the Grounds of Claim);

b) Did the Second Respondent tell her during a telephone conversation on 15 February 2022 that he had lost trust in her and that she was not the right person to take the First Respondent forward (paragraph 62 – 63 GOC);

c) Did the First and Second Respondent remove duties from the Claimant, including the search for new premises, on or around 17 February 2022 (paragraph 64 – 65 GOC);

d) Did the Second Respondent begin to be rude and argumentative towards the Claimant (paragraph 67 GOC);

e) Did the First and Second Respondent fail to invite the Claimant to the usual company meetings (paragraph 68 GOC);

f) Did the First and Second Respondent fail to include the Claimant in rectifying issues on the website that she had identified (paragraph 68 GOC)

g) Did the Second Respondent, at a meeting on 20 February 2022 at a restaurant in Dubai:

i) verbally attack and berate the Claimant *and was he physically abusive to her;(the issue in italics was withdrawn by the claimant during cross examination)*
ii) tell her to resign;
iii) accuse her of trying to frame him;
iv) tell her, repeatedly to resign;
v) threaten her with damage from the FCA and reputational damage if she did not resign.

h) on 22 February 2022, did the Second Respondent:
i) threaten her with regulatory and reputations consequences if she did not resign;
ii) say that she was dismissed but still had a chance to resign;

i) did the First and Second Respondent contrive to ruin the Claimant's reputation, in particular by the public manner in which she was dismissed (paragraphs 70 – 81 and 86 GOC);

j) did the Second Respondent dismiss the Claimant in the manner that he did (paragraph 70 – 81 GOC);

k) did the First and Second Respondent fail to provide a reason for the Claimant's dismissal (paragraph 82 GOC);

l) did the First and Second Respondent provide sham reasons for the Claimant's dismissal (paragraph 83 GOC);

m) did the First and Second Respondent conduct a sham investigation into the points raised in the Claimant's appeal letter of 14 March 2022 (paragraph 84 GOC).

6. If so, did they amount to detriments?

7. If so, was the Claimant subjected to the detriment(s) on the ground that she had made protected disclosure(s)?

Unfair Dismissal

8. Was the sole, or if there was more than one, the principal reason for the Claimant's dismissal the fact that she had made protected disclosures?

9. If not, what was the reason for the Claimant's dismissal?

10. Has R established C was dismissed for a potentially fair reason, namely SOSR, within s.98(1)(b) and (2) of the Employment Rights Act 1996? ("ERA 1996").

11. Was C's dismissal "fair" within the meaning of s.98(4) ERA 1996?

12. If the Tribunal concludes that the dismissal was unfair as a result of procedural defects, would the Claimant have been fairly dismissed in any event? If so, when?

    If the Tribunal concludes that the dismissal was unfair, would the Claimant have resigned in any event?

13. Did the Claimant cause or contribute to her own dismissal by her own conduct?

Limitation

14. Is the detriment pleaded at paragraph 88 (a) of the Grounds of Claim (and therefore by reference to paragraph 19 of the Grounds of Claim) in time in relation to the Second Respondent?2

Remedy
(if the claims succeed)

[2] The ACAS Early Conciliation in relation to the Second Respondent was received on 12 May 2022, so the Respondent says that any act occurring before 12 February 2022 is, on the face of it, out of time. The Claimant, in summary, says in response that it relies on continuing acts.

15. Is (and if so, in what amount is) the Claimant entitled to compensation for injury to feelings?

16. Is (and if so, in what amount is) the Claimant entitled to:

    a. a basic award for unfair dismissal?
    b. a compensatory award for unfair dismissal?
    c. Compensation for financial losses flowing from any detriments imposed (insofar as this is not addressed above)?
    d. damages for pain, suffering and loss of amenity in respect of personal injury;
    e. aggravated damages?

17. Has the Claimant mitigated her loss? If not, for what period of loss should the Claimant be compensated?

18. Should any damages awarded to the Claimant be reduced (including to nil) on any of the following bases:

    a. That she would have been fairly dismissed in any event;

    b. in the alternative, that the Claimant would have resigned in any event;

    c. that she caused or contributed to her own dismissal and/or the detriments about which she complained, by her own conduct; and/or

    d. that her disclosures were not made in good faith (the Respondent acknowledges that any reduction on this ground cannot exceed 25% of the Claimant's damages in relation to the detriment claims).

19. Should interest be awarded, and if so, at what rate and for what period?

Finding of Facts

8. The first respondent is a company incorporated in England and Wales with the registered company number 10671764. The first respondent was incorporated on 15 March 2017 and is a subsidiary of Advanced Markets LLC, a company incorporated in the United States of America with the registered company number L08000063350. As of February 2022, the first respondent had 5 employees based in the UK, including the claimant, and Advanced Markets LLC had 15 employees based in the US.
9. Anthony Brocco, the second respondent is the CEO of Advanced Markets Group (the 'Group') and a director of the first respondent. At all material times, the second respondent was the claimant's line manager.
10. The second respondent was the decision-maker in relation to the dismissal and the detriments were said to be either by the first respondent or the second respondent.
11.

The claimant’s role.

12. The claimant's employment with the first respondent began on 1 March 2017 following an offer letter dated 28 February 2017. She was initially employed as the Director of UK Operations and Sales with a salary of £75,000 per annum.
13. On 1 July 2018, the claimant was appointed as the Managing Director and Head of Compliance of the first respondent and her salary was increased to £130,000 per annum. The claimant was appointed as a director of the first respondent on 23 June 2017. She was appointed as a director of AM Support and Consulting – a subsidiary of the first respondent – on 7 December 2020.
14. The claimant explained that she was contacted by Michael Cairn, the Group COO, to join the first respondent. We were taken to two CVs that related to the claimant. The first was clearly prepared before she joined the first respondent and the second thereafter. The claimant believed that she would have provided the first CV in 2018, the second was updated although was unclear exactly when. The claimant accepted that there were some inaccuracies in these documents as to her length of employment with at least two of the entities. This made it appear that she had a consistent and consecutive employment pattern when she did not. We find that her CV was misleading and this impacted on the employment tribunal's view of the claimant's general credibility.
15. Having met with Mr Cairn, she agreed to join the first respondent and worked to obtain the regulatory licence. It was agreed by all parties that the claimant would be undertaking the role of the Money Laundering Reporting Officer, and she was entered as the senior management function ("SMF") 17. The claimant was also given the role of SMF16 (compliance oversight. As the Head of Compliance, the claimant was responsible for overseeing and managing the compliance rules and regulations within the first respondent. Therefore, for the first respondent she was the SM3, SMF16, SMF17 and CF30 (client facing function).
16. It was common ground that there was a company handbook that applied to the staff of the first respondent. This contained a number of policies including a disciplinary policy, a grievance policy and whistleblowing policy. The claimant accepted that she was aware of these policies and, as head of compliance, the whistleblowing policy fell under her remit. The claimant confirmed that she was responsible for the whistleblowing policy and was familiar with it.

<u>The Claimant's pay issues prior to November 2021</u>

17. On 11 December 2019, the claimant requested that her salary be increased by £30,000 per annum from £130,000 to £160,000. This was approved with the increase to take effect from the first payroll in January 2020.
18. In June 2021, the claimant sent the second respondent a text message requesting a further salary increase and that she had anticipated that her salary would be increased to between £220,000 to £250,000 per annum. The second respondent replied to say that he would address the claimant's concerns but that he needed a few more weeks to do so.
19. It was the claimant's evidence that the second respondent continued to promise her a higher salary for working long hours and performing multiple roles. She was also promised share options in the Advanced

Market group of companies and a discretionary bonus. The second respondent confirmed that there had been discussions about future share options. We accept that there had been conversations about increasing the claimant's package.

20. We heard from Remonda Kirketerp-Moller, who had a professional relationship with the claimant, that the claimant would regularly complain to her about her pay.
21. On 8 September 2021, the claimant spoke with Peter Halloway-Churchill by telephone. He explained that the Claimant asked him about salary levels for a CEO role in a similar firm to the first respondent where the CEO would hold SMF3, 16 and 17. She had told him she earned £160,000 pa. He told her that a salary of £180,000 pa would be reasonable if holding SMF1, 16 and 17 but that she did not hold SMF1, and the first respondent was not taking any risk, so her current salary was not unreasonable.
22. It was his evidence that the claimant seemed disappointed by this information and asked: *'surely a greater package should be paid on top?*' The claimant said she would expect to earn £240,000 pa and a bonus on top. She said she deserved this as she had made a big contribution to Advanced Market's operations. In consequence she now wanted to earn a total of £300,000 pa. He advised her that this salary level might be feasible if she was bringing in big profits but that he did not think she was bringing in anything. As he considered this was an odd conversation to have with him, he wrote an attendance note of the call. We accept that that is an accurate note made contemporaneously with the conversation.
23. In around 13 September 2021 there was exchange of text messages between the two in which the claimant was asking about her salary. In that Mr Halloway-Churchill suggested that her salary could be over £250,000. The claimant in the text exchange stated she believed it should be £300,000 and asks him to explain to her and to the second respondent the salary that she should be on.
24. In oral evidence Mr Halloway-Churchill explained that when the claimant was discussing a salary of £250,000 with him he believed the claimant had a large book of business that she was bringing and was on that basis he thought that the salary level she was suggesting might be appropriate. Once he appreciated this was not the case, which was not until 15 November, he formed the view that the demand for salary £300,000 was wholly unrealistic and bore no relation to the accepted UK remuneration for the role that she carried out. This was the advice he gave the respondents in March 2022. It was not advice he gave to the claimant.
25. On 11 November 2021, the claimant and the second respondent met in Charlotte, USA. The parties agree that during the meeting a salary of £300,000 was discussed, and it was agreed that the claimant's salary would be increased from £160,000 to £180,000. More details of this meeting are set out below.
26. On 15 November 2021 the claimant texted Mr Halloway-Churchill and asked him to help her find a new CEO job and let her know about any company that might be looking. He explained that from this intervention he then became aware the claimant did not have a strong client book, and he explained to us that on that basis the salary level of £300,000 that she was seeking was not.
27. We find that the claimant was unhappy about her pay level going into the meeting of 11 November 2021. She considered that she should have a package worth £300,000 per annum. We also find that this salary level

was considered to be unrealistic by the independent consultant and by the first and second respondent.

28. We find that the claimant's discontent with her pay and unhappiness at the shift in focus in mid-2021 from the London operation to the unregulated entity together with the hiring of the head of risk impacted her conduct and behaviour at work. We find that this discontent was visible to members of the respondent staff and we accept the account given by Ms Mistry of the change in the way the claimant acted.

In-person meeting between the second respondent and the claimant in Charlotte, (head office) 11th of November 2021

29. It was agreed that the claimant and the second respondent met when the claimant visited the United States in November 2021. It is common ground in this meeting that a salary of £300,000 was discussed and it was agreed that the claimant's salary would be increased from £160,000 £180,000.
30. The second respondent's account of this meeting and the claimant differs in that the second respondent gave evidence that at the start of the meeting the claimant told him the whole purpose of the visit was to tender her immediate resignation, that she was not happy and was grossly underpaid. The second respondent explained to the claimant that her role was not a revenue generating role and that he considered that she was already well paid at or above market rate. He was shocked by the way the claimant had ambushed him. They had worked together for nearly 5 years and the second respondent felt they had a good working relationship.
31. The second respondent's written evidence was that as they were considering the merger with Edgewater, he tried to reassure the Claimant that they would have to revisit everything including salaries if and when the merger went through. He counselled her not to make a rash decision and offered to give her a raise of $25,000 until they had clarity on the Edgewater deal.
32. He gave more detail as part of the appeal process which was this
    "You arranged a meeting with me in Charlotte, USA, in November 2021. At our meeting, the first words from your mouth were that the whole purpose of your trip was to submit your resignation. Your proposed resignation came as a complete shock to me, especially as we have worked together for almost 5 years and previously had a good working relationship. I explained how it wasn't really fair to lead with your resignation, and that if you were unhappy, we had always been able to discuss. You mentioned that you felt you were not properly compensated and wanted more money for performing your functions. (I gave several reasons for not feeling your role warranted much more as there was a decrease in focus on UK operations; the UK company could not and would not grant you a significant raise for continuing to perform your current role; you were already handsomely and fairly compensated; the fact that your role is a compliance rather than profit generating role). However, despite my reasons, I did offer you a £20,000.00 (more than 10% raise) increase to your salary. You indicated that you were satisfied with this, and that you would not resign and continue working for the UK company."
33. The second respondent said he was alarmed by the Claimant's threat to resign with immediate effect as this would jeopardise the operations of

the first respondent as it would not have the relevant UK based staff to operate in the London market. Immediately after this meeting with the claimant, the second respondent spoke to the Director Of Business Operations to ascertain whether he would be prepared to move to London if (as seemed likely) the claimant left the first respondent. Mr Atteya confirmed that this conversation had taken place and it was his evidence that in November 2021, shortly after the claimant had spoken to the second respondent about her salary on 11 November, the second respondent asked if he might be willing to move to London if the claimant decided to leave the first respondent. He had been considering a move to London from the summer of 2021 but this was for lifestyle reasons. We find that he was now asked to consider accelerating that move to London to take over some part of the claimant' s role at this time and we accept his evidence.

34. Throughout the rest of November and December 2021, the second respondent told us that he spoke at length with Mr Gooch about the risk which the claimant's sudden resignation presented to the company. They spoke to the Compliance Consultant to ensure that in such an event, their FCA function would not be jeopardised.
35. Mr Gooch's evidence confirms that of the second respondent. He explained that he was not present at this meeting with the claimant, but he gave evidence that he was called into second respondent's office while the claimant was present and he was told that the claimant had said that the reason for her visit was to resign it was explained to him that she had ultimately changed her mind and decided not to resign having been given a salary increase.
36. Mr Gooch confirmed that that shortly after that meeting, he and the second respondent spoke privately, and they were concerned about the claimant's actions. In his written evidence he stated that he was concerned about the continuity of the business because the claimant held regulatory functions and that he and the second respondent need to prepare for how those would be covered if she were settling to resign. He and the second respondent therefore had to immediately prepare for a sudden resignation the spoke about this several times a week from that point on.
37. The claimant denies that she threatened to resign. She states she did not mention resignation at all. Irene Kambouris told us in her witness statement that the first time she went for drinks with the claimant was when the claimant visited the office in November 2021. On that occasion the claimant told her she had come to the US to resign. Ms Kambouris said that she was shocked by this and suggested that she talk things through with the second respondent. It was her evidence of the claimant said it was not working and the relationship breakdown felt like a bitter divorce.
38. Ms Mistry also states in her witness statement that when the claimant came back from the November visit to Charlotte, she told that her that she tried to resign and had been given more money.
39. Mr Gooch was asked about the availability of documents backing up the respondent's position and he accepted that there was no written evidence of these conversations as they were all oral. The second respondent was asked whether there was any contemporaneous documentary evidence to support his position that he was seeking advice on how to deal with the claimant's potential resignation and what to do with her compliance duties and he confirmed that there was none. It was put that this was unlikely

but we find that this company was not one which generally documented matters. We do not find that the lack of any written information about the claimant's potential resignation and impact on London means that this did not happen.

40. On the balance of probabilities, we conclude that the claimant did in fact have resignation in mind when she came to the US and that it was reasonable of the second respondent and Mr Gooch to take the view that she had threatened to resign but had been persuaded not to do so as a result of the pay rise that she was awarded. While the claimant denies this, as set out above a number of other witnesses gave evidence of their conversations with her in which they recall her telling them this.
41. Mr Gooch and the second respondent have been criticised as not credible witnesses. For the claimant's account to be correct, this would require not only their evidence to be incorrect but also that of three other individuals. The conversation of Mr Atteya and Ms Kambouris' recollection, together with the evidence from Ms Mistry support the evidence of Mr Gooch and the second respondent. On the balance of probabilities, given the number of witnesses who support the respondent's view together with what we have found to be the claimant's concerns about her pay, on this occasion, we prefer the respondent's witnesses recollections of events. It is further supported by the matters set out below.

Intention to resign

42. Mr Cairns gave evidence in his witness statement on what was said to be the claimant's change in conduct. It was his view that everything changed for the claimant after 2021 when the Bermuda entity became part of the group, Mr Tovmasyan became an investor and another employee, Mr Christou joined the team. It was his view that as the Group expanded the claimant's influence diluted and the claimant took exception to this. Further, in his view the expansion of the group made it evident that there were gaps in the claimant's expertise that were unexpected.
43. His view was supported by that of Ms Mistry who told us that in mid-2021 when the new external investment and team members came on board the claimant's behaviour seemed to change and she went from being solutions focused to being agitated by anything new or out of the ordinary. On Ms Mistry's account this behaviour continued towards the end of 2021 and her unhappiness with her pay and general agitation seemed to increase further. She told us that the claimant's demeanour had changed in 2021 but from November onwards there was another shift in attitude after she came back from Charlotte.
44. We accept the evidence of Mr Cairns and Ms Mistry on this point. It is consistent with the claimant's evidence that she felt left out from the point the investor came on board. We note that on 27 March 2021 she texted the second respondent to say that it was a shame she was never in any of these calls or meetings/plans for expansion. It seemed like she was not needed anymore, and she felt left out. When she was asked about this text the claimant explained that she wanted the UK entity to be the flagship of the Group and the focus shifted to Bermuda and the unregulated entity. We accept that there was a decrease in focus on the UK operations once the investor came on board and the Bermuda entity was created and that the claimant was not happy about this. This is clear from the grievance that the claimant lodged in 2022.

45. That makes a complaint of bullying at work and dealt with events that she said occurred around September 2021. In that grievance the claimant says that soon after the Head of Risk officially began his employment certain problems started occurring, but the second respondent failed to rectify his behaviour and the individual continued to "*terrorise female staff members and myself*". She also states that following this individual's employment he was included in high-level management meetings and she was not. When she raised this with the second respondent it was her view that she was then only invited to a small quantity of meetings which were menial ones and prior to her attending important issues were already discussed in her absence. The second respondent disputed this and we prefer his evidence on this point. We find the claimant was able to go to any meetings that were relevant to her that she wished to attend.
46. We find that the claimant was unhappy about the investor coming on board, the Bermuda entity plan and the hiring of the Head of Risk and the subsequent decrease in importance of the London operation. This began in March 2021 with the investor coming on board and then the hiring of the Head of Risk in June 2021. His hiring also added to the claimant's unhappiness about her salary. She was very unhappy that the Head of Risk would overtake her salary by the time his contractually agreed three-step pay rises took effect by 2022.
47. We heard from a number of witnesses about the claimant's intentions and her attitude towards her role. Mr Halloway-Churchill gave evidence that on 4 August 2021, the Claimant called him to say she had a friend looking for a CEO role and asked me if he knew of any going. He offered to speak to the 'friend' but the Claimant never introduced them. He wrote an attendance note of the call as it was pretty clear to him that this enquiry was not about a friend but that the Claimant was asking this question on her own behalf. The claimant maintains this was for a friend and not for herself. The claimant accepted that she did feel left out to a certain degree from March 2021 with the new investor and staff and less contact with the second respondent. On the balance of probabilities, we find this enquiry was for herself.
48. On 15 November 2021 the claimant asked Mr Halloway-Churchill to introduce her to anybody else looking for a CEO. On 10 January 2022, C sent a text message to Remonda Kirketerp-Møller in which she said *" I've been thinking for a while to leave AM as to many uncertainties and they don't pay me properly....Staff who are much junior all get higher pays than me and no responsibility's. Since the new shareholders have taken over the company has changed completely and have started to replace a lot of senior staff. I feel my journey here coming to end and would like to start fresh elsewhere."*
49. On 27 January 2022, C sent Ms Kirketerp-Moller a text message in which C said that she was hoping to find *"a new job elsewhere and leave this all behind."*
50. We heard evidence from Ahmed Atteya that during late 2021 and early 2022 the claimant told him several times that she was not happy, and she wished to leave. He told her not to do so unless she had another role to go to. Initially he said that the claimant gave as a reason the company did not like women. However, after a while the conversation shifted, and she said she wanted to quit because was not happy with her salary.
51. We find that the claimant had indeed made these enquiries and indicated that she was looking for another job from August 2021. We also find that her attitude to the first respondent had shifted from early to mid-2021. We

find that these factors are consistent with her having said she was resigning when she came to the meeting in November 2021.

52. We find, therefore, that not only did the claimant threaten to resign in this meeting but that the first and second respondent were legitimately concerned about her attitude to her role and were legitimately concerned that she might do the same again. We accept that this damaged their confidence in the claimant and that they did have conversations about how they might deal with the regulatory requirements in the absence of the claimant.

The second respondent's loss of confidence in the claimant

53. The second respondent said that he began to lose confidence in the claimant from 11 November conversation, however, things had changed to much greater degree from the point at which the claimant raised the first of the alleged protected disclosures because of what he saw as a change in her behaviour. In the respondent's pleaded case it was said that second respondent felt that the claimant was trying to trap him by making inaccurate records of what they had discussed which she could then use at a later date for her own advantage. The second respondent's witness statement stated that in November 2021 he started to feel the claimant was trying to trap him.
54. The second respondent identified that this change in behaviour after the November conversation manifested itself in the sending of three emails about three of the matters which are said to be protected disclosures. That is about the protected disclosures other than the website. He told us that the claimant was sending emails following conversations and misrepresenting the picture. This was different behaviour.
55. In cross-examination the second respondent suggested that he was curious about the claimant's attitude more than anything else and it was suggested that his more significant concerns about the claimant's behaviour only arose after the dismissal and he reviewed what had happened and concluded that it was part of some sort of trap. We find, that while it may well be the case that an even more negative view of the claimant was formed post her dismissal and this claim, at the time of the claimant's emails, at least as far as they relate to the first three protective disclosures, they contributed to the second respondent's loss of confidence in the claimant. He did consider that something was going on.
56. The claimant accepted that she was documenting things when she sent the emails relating to the protected disclosures and that this was different behaviour. She explained, however, that this was because she had not had to document matters before because there hadn't been any breaches.
57. We find that the parties agree that it was different for the claimant to be sending these three emails. We therefore conclude it was reasonable for the second respondent to identify the sending of these three emails as a change in behaviour and we accept that it caused him a degree of concern as to the claimant's motive. The disagreement is about the reason why they were sent and whether they were for some ulterior motive and a trap as the respondent believed or the claimant was raising concerns that she reasonably believed to be issues.

The first alleged protected disclosure (meeting 25th January, email on 31st of

January and phone call on 3 February 2022)

The meeting – disclosure

58. On 19 January 2022 the claimant was sent an email by Mr Gooch stating he wanted to schedule a meeting on 25 January and saying the purpose of the call was to discuss the current workload capacity of the B2B on boarding team for the group and potential future needs. In her witness statement the claimant says that at no point prior to the conference call was she made aware of or given any indication that the UK regulated entity would be on boarding retail clients from an unregulated jurisdiction i.e. Bermuda.
59. Nonetheless it was the claimant's evidence that she understood from this email, because it was also addressed to the head of the Bermudan operation, that it was going to be a meeting to discuss the London office on boarding retail clients which was a breach of the London operations regulatory licence. She was clear in her evidence to the panel that she understood this simply from the inclusion of the head of the Bermudan operation although as her witness statement says she had not been told this or given any indication that this was the likely subject matter of the call.
60. Despite this lack of express information, we find that the claimant had reached the conclusion that was what was likely to be asked, and she took advice in advance of the call on the basis this was going to be the request. Mr Halloway- Churchill told us that the claimant called him about 20 times in respect of this proposal. Ms Mistry recalled that the claimant called Mr Halloway-Churchill and Ms Kirketerp-Moller before the first call with Mr Gooch on 25 January. It is also agreed that the advice that she was given related to the issues with London on boarding retail clients and we accept that that was because the claimant had set that out as the scenario that was being contemplated.
61. Mr Gooch, who set up the meeting, told us that he set it up because he and the second respondent had become aware that the UK on boarding team, that is Ms Mistry, were not being fully utilised and had ability to take on more work. In light of the Group's growth he and the second respondent discussed how they could best use the spare bandwidth of the team given the needs they had at the time. To get a better understanding of the situation he therefore sent the email on 19 January to arrange a meeting to establish from a man hours perspective how many free hours the team had and to discuss how they could use that in a way that was beneficial to the group.
62. While the second respondent was included in the email proposing the meeting it does not appear that he was actually part of the call. That telephone call seems to have taken place between the claimant, Mr Gooch, Ms Mistry and the head of the Bermudan entity.
63. The claimant says that in the first meeting on 25 January it was indeed proposed that the first respondent would start to onboard or process new clients on behalf of the Bermuda entity, and that she raised concerns about such a proposal during the call. On her pleaded case she said that she had expressly referred to s.19 of the Financial Services and Markets Act 2000, which contains a general prohibition on carrying out regulated activity without regulatory FCA permissions and the FCA Handbook "PERG 8.23 Regulated Activities". Furthermore, it was her evidence that in the respondent's suggesting that she acted as they wished, they were

asking her to commit a criminal offence in breach of s.19 of the Financial Services and Markets Act 2000.

64. This level of detail is not included in the claimant's witness statement. That specifies that she warned participants that if the first respondent agreed to on-board Bermuda's retail clients there would be in severe breach of the FCA licence and the first respondent would be jeopardising its operations and future.
65. Ms Mistry's recollection of the meeting is different. On her account there was no decision on the call that the UK team should undertake the processing of corporate retail clients Bermuda, it was an exploratory call. They did discuss the fact she had spare capacity. They also discussed the fact that the Bermudan entity need assistance with onboarding, and she already helped the Cayman entity with its onboarding. She does not recall the claimant highlighting that the first respondent's licence conditions meant that it could not aid retail clients.
66. Mr Gooch also confirmed that in his recollection the meeting was exploratory to consider how much bandwidth Ms Mistry had to take on extra work and it was not suggested that the UK onboarding team would be performing the onboarding function retail clients Bermuda entity. The call was to see how the UK onboarding team might be able to provide guidance and assistance the Bermuda team to help them become familiar with and understand how to approach the onboarding process until they could do this self-sufficiently. Neither Mr Gooch nor Ms Mistry recollected the claimant making reference to the sections of the relevant act and Handbook.
67. On the balance of probabilities, we do not accept that the claimant expressly specified that this was a serious regulatory breach or named the legislation as she says in her pleaded case. This was not in her witness statement. We also find that the claimant did not at this meeting on 25 January state, as set out in the issues list, that "*the first respondent's regulatory structure was insufficient with regard to providing relevant protections and requirements that apply to retail clients, irrespective of whether the retail client as an individual or corporate".* We find that she did not say, as the issues list suggests, that if the UK team undertook the processing of new applications in respect of corporate clients "*this would lead to a conflict of interest and it would therefore be a breach of the first respondent's regulatory licensing conditions."*
68. We do not accept that she made the disclosure as she sets out in her witness statement. We prefer the evidence of Mr Gooch and Ms Mistry as to the nature of the meeting and what it was the claimant said. We make this finding because the claimant has been inconsistent in her witness statement, her pleaded case and how this is characterised in the list of issues as to what she said. The others who were present at the meeting do not recollect her saying it.
69. We also find that the inclusion of the head of the Bermuda entity in an email discussing work capacity is not a reasonable basis on which to form a belief that the London entity is going to on-board Bermudan retail clients. It was well known that this was not something that could be done and would make no sense of the group structure that had been adopted. The claimant would have been well aware of this.
70. For these reasons we prefer the account of the other witnesses over hers. We therefore find that the claimant did not make any disclosure at all as she has pleaded in the meeting 25 January. We find that this part of the first alleged protected disclosure did not occur as a matter of fact, and it

was not reasonable for the claimant to believe this might have been going to be discussed.

The two emails- disclosure

71. It is agreed that following this meeting the claimant then contacted the second respondent by email on 31 January 2022. She explained that the delay between the call and her first email was because she continued to take advice on the point.
72. In that email sent at 6:18 AM the claimant set out that she had discussed the matter with the FCA consultant, and the lawyer and their advice was simply no. That letter starts by saying that further to the meeting with the second respondent and Mr Gooch they discussed that they would like Ms Mistry to start undertaking the B2B onboarding the Bermuda entity. The letter contained a number of points and Ms Mistry was asked if the letter was accurate. She disputed some points but did not question this introduction. That introduction is inconsistent with her witness evidence as to what was discussed on the meeting.
73. This email goes on to say that it would be a conflict-of-interest for Ms Mistry to conduct the work. It also states that she is seeking advice on how this could be done without have any repercussions on the regulator should they have an audit. She states that the legal advice is just no so as to keep the FCA entity workload separated Bermuda retail entity not have any overlap as not to jeopardise the licence.
74. The claimant sent a second email to the second respondent at 10.55 that day. In this she set out that the problem arose because the UK office did not have permission to on-board retail clients. She explained that if the person in the UK office did on board a retail client for Bermuda as the first respondent does not have permission to on-board retail clients that would be against their permitted activities. She suggested that if the regulator was to be aware that this was happening then the licence would be at risk. We find that this is information that a legal obligation is involved and there is a potential regulatory breach.
75. The second respondent replied at 10:55 AM to say he would speak to her later and that the communication with the client would be through Bermuda with Ms Mistry acting as a consultant to the Bermuda onboarding team. It was not the UK office reviewing the information.
76. At 13.06 on the same day the second respondent contacted the claimant again as follows

> *"What your saying makes no sense.*
> *Just because Sunita is employed by the FCA entity, does not preclude her from doing work for the group.*
> *Shobin works for FCA, does that mean he cannot introduce clients to Bermuda?*
> *The FCA entity is not taking retail. Does that mean she cannot work on behalf of another entity in the group? I am employed by US entity. Does that mean I cannot speak to FCA clients? Sunita is currently onboarding clients for Caymans. Lisa is onboarding clients for FCA . Working for Bermuda entity, which she is on this capacity, does not affect the FCA entity at all.*
> *I wish of you were going to speak with them you would have*

included me or Geoff. Not sure you properly relayed the job description in the proper context.

I would never ask anyone to do something that would jeopardize themselves or the entity. Been doing this long enough across many entities globally, but performing some duties for Bermuda does
not have any conflict with FCA entity, rules, or functions. How does vetting a corporate client for Bermuda conflict with FCA entity? The FCA entity does not touch the client. Am I to believe that Sunita is not allowed to do any work outside of the UK entity as it is a conflict?

Does not make any sense"

77. We find that the second respondent's response is consistent with the position that the FCA entity was not being asked to on-board retail clients. Spare capacity was potentially going to be used on behalf of another entity. We find that the tone of his email and his repetition of the statement "*it makes no sense"* are consistent with the second respondent's position. We find that from his perspective there was never any suggestion of the London entity onboarding retail clients.
78. At 13.29 Mr Halloway-Churchill provided written advice to the claimant stating that the problem arose as the UK office did not have permission to on-board retail clients if the person in the UK did that it would be against their permitted activities. This was in effect what the claimant had been saying earlier in the day but was based on her description to the consultant of what the business was seeking to do. There was a further advice note from Mr Halloway-Churchill at 15.25 sent to the claimant which gave more detail as to what was or was not permitted.
79. Mr Halloway-Churchill explained that he subsequently had a telephone conversation with the second respondent. and understood that the request was about using excess capacity in London to assist Bermuda. He explained that it was perfectly feasible to use excess capacity in London, provided the individual used a Bermudan email address and Client Relationship Management System and the client understood that they were being onboarded to a Bermudan entity. It was also important that if a client was looking at the website, then it should show them leaving the London section of the website and moving to the Bermudan section, so there was no impression the client was in any way being onboarded in, or by the UK office**.**
80. In this way, Ms Mistry was able to help the Bermudan team by reviewing corporate documents for them. Her role would only be to assess whether a potential Bermudan client had provided sufficient and verified information for the Bermudan office to then consider accepting them as a client.
81. At that point he understood what it was the first and second respondent were seeking to do, and he therefore gave different advice. He set that out at 15.39. In his oral evidence he explained that it was perfectly normal for Chinese wall to be put in place with different IP addresses to be used to allow capacity to be used by one business to carry on activities by another. We find that there would never have been a regulatory issue based on what it was the respondent potentially contemplated doing.
82. On the wording of the emails there is no express identification of the legal breach or obligation. At best the claimant is suggesting a potential

regulatory breach may occur if the first respondent were to do something. She is also suggesting solutions to avoid that.

83. Based on our findings as to what was actually discussed and the independent consultants evidence that what the respondent was seeking to do was fairly usual and can be easily done, we find that it was not reasonable of the claimant to believe that a regulatory breach was likely to occur. It had not been discussed on the call and there was no reason for her to think this and so we conclude that it was not objectively reasonable for her to have formed such a belief.

<u>Call on 3 February (not 31 January as the issues list set out) –disclosure and detriment</u>

84. It is agreed that was then a further call between the claimant and the second respondent on 3 February 2022 at which Ms Mistry was present in which the second respondent said that he wanted the first respondent to provide training to the Bermuda entity to enable it to onboard corporate clients. The second respondent also said that he had never mentioned onboarding new clients on behalf of the Bermudan entity. He did not change his position.
85. The claimant disagreed and gave evidence that she was raising a legitimate concern based on what she thought the respondent was planning to do. In her witness statement she stated that she reiterated that the first respondent would be in breach of its licence regulatory obligations if it proceeded as it was suggesting. We accept that the claimant probably did make this statement as it would be consistent with the emails that she had sent. Based on our findings as to what was actually discussed and the independent consultants evidence that what the respondent was seeking to do was fairly usual and can be easily done, we find that it was not reasonable of the claimant to believe that a regulatory breach was likely to occur. It had not been discussed on the call and there was no reason for her to think this and so we conclude that it was not objectively reasonable for her to have formed such a belief and to express this on the call.
86. The claimant was adamant that the second respondent had changed his position on this call in February. The claimant also said that the second respondent was rude and argumentative on this call, and she relies on this as one of her detriments following on from the call on 25 January and email of 31st of January. In her witness statement she refers to a number of calls about this which she describes the second respondent angry, very rude and patronising. On their calls he became stubborn and aggressive and insinuated the claimant was useless and stupid and he knew better.
87. We find that on or around 21 January the claimant had formed the view that the UK entity was being asked to do something that was a breach of its licence at the point the email suggesting initial meeting was sent. This is consistent with the advice that she took before the call on 25 January. We have found however that there was no reasonable basis for her to have formed this belief.
88. We have also found that the situation she was concerned about was not what was discussed on the call, nor is it what the respondent was intending. We accept that it was well known to all parties that the London entity could not on-board retail clients and we also accept that the

Bermudan entity had been set up to allow the group to access clients is London regulated business could not. Whatever the claimant believes she heard, we accept the evidence of Mr Gooch and Ms Mistry as to the matters discussed on the original call and find that the claimant was mistaken.

89. We find that the respondents were enquiring as to use of spare capacity, that the call was exploratory, and they were not doing as the claimant suggested. We also find therefore that the second respondent did not contradict himself on 3 February call and change his story at all, and certainly not because he'd been caught out as the claimant alleges. What he discussed with her was consistent with what we find was the intention of the meeting and what was in fact discussed on the phone. The claimant had decided she was being asked to do something she wasn't with no justification for this view.
90. On our findings of fact, the respondent's position had remained the same. We find that the second respondent's description of what he wanted to happen in that call was consistent with the email he sent the claimant on 31 January and his conversation with Mr Halloway-Churchill as the latter has described it. As we do not accept the claimant's account of the initial call, we also prefer the second respondent's evidence to that of the claimant as to their conversations on the subject and also find that the second respondent was not rude and aggressive to her on this call. He did not insinuate that she was useless and stupid in previous calls on this subject.
91. The claimant raises as an act of detriment that the first and second respondent undermined her role in a telephone call on 31 January in relation to this first alleged protected disclosure. We believe the parties agreed that this was in fact 3 February call. The claimant's evidence was that because Ms Mistry was on the call when the second respondent was in her view changing his mind this undermined her authority. We have found that did not happen and therefore also find that the claimant's authority was not undermined on this telephone call.
92. We prefer the account of the respondents to that of the claimant for a number of reasons. Mr Atteya's witness statement made reference to this incident, and he said that the claimant told him that it had been confirmed as a misunderstanding. That accords with her accepting that she had got her facts wrong. We have found, on the balance of probabilities, that the claimant did not specify the breach the legislation in detail that she sets out on her pleaded case and we find her account of the meeting less credible accordingly.
93. We have also found Ms Mistry to be a reliable and credible witness. While there is a discrepancy in her evidence in that she did not challenge the accuracy of the opening paragraph of the claimant 31st of January email, on balance we find that does not invalidate the rest of her evidence about this. We also rely on the second respondent's immediate response email. That is a contemporaneous document and reflects his surprise at the claimant's suggestion.

<u>The Second Alleged Protected Disclosure</u>

94. This relates to a gift. It is the respondent's case that the gift was paid for by Anna Aratovskaya (who was based in the US and employed by Advanced Markets LLC as Vice President of Institutional Sales) and

expensed on 5 January 2022. It is the respondent's case that the relevant expense form was approved by Advanced Markets LLC on 10 January 2022. It did not need to be entered in the UK register.

95. The respondents say that a gift was made to an individual comprising a dinner and four nights in a hotel in Paris. There was some confusion as to whether it also included an additional sum of money, but we accept that it did not. The gift is payment of a hotel bill and an expensive meal.
96. Ms Mistry explained that in early February 2022 the Head of Risk had mentioned to her that a salesperson had mentioned that her client was away and requested a gift be made. Ms Mistry suggest that the claimant also overheard this conversation. The claimant says that she did not. It is, however, common ground that Ms Mistry discussed the matter with the claimant.
97. It is the claimant's evidence that she understood that Ms Mistry was also told by the Head of Risk that the second respondent was providing the client with favourable and better trading conditions and other clients to incentivise the client trade by providing larger rebates. It was the claimant's evidence that this can lead to overtrading.
98. It is also common ground that it was agreed the claimant should investigate the issue and raise it with the second respondent if she thought it was a problem as this was her responsibility as Head of Compliance. Ms Mistry was unaware of the details of the gift because it had just been a casual chat with the Head of Risk. She did not believe that anyone had used the word bribery. It was her evidence that at the time she knew that the individual was a client of the London office. She was not aware that they were a client of the Cayman entity. Ms Mistry does not recall either the Head of Risk or the claimant talking about this, and she did not use the term overtrading at all. She believed it was reasonable of the claimant to raise the gift, but that she should investigate it to determine if it was an issue or not.
99. It appeared to be suggested that the claimant could not properly investigate this because she had no access to the UK bank accounts. We find that she did or could have had access to the UK bank account to check whether the amounts had been paid from London. She confirmed that her direct report had access to the bank account. We were also taken to evidence in the bundle which shows that access for the claimant was set up from 2 February 2022. In any event the claimant in answer to cross examination questions confirmed that she always knew that the expenses had not been paid by the UK as Ms Mistry had told her that and in any event, on the claimant's account, all expenses were paid for by the US account.
100. The claimant accepted that she was aware of the identity of the client from the outset. She was also aware of who the salesperson was who had asked for the payment to be made and that she was not employed by the London entity. As referred to above on her own account she knew that the money had not been paid from London's bank account.
101. The claimant telephoned the second respondent on 2 February. There is no reference to overtrading being raised in the claimant's account of her conversation with the second respondent on this day. The second respondent also confirmed that this was not raised by the claimant. He would have found it a strange comment anyway as the claimant was the CEO and owner of his own company and trading his own company funds and therefore such a concern would be completely unfounded.

102. On the claimant's account she drew to the second respondent's attention that a UK client had been given a substantial gift by him or the group that she was not aware of. The second respondent agreed that he asked the claimant who told her this. He does not agree as the claimant suggests that he told her it was none of her business in a loud and condescending way.
103. In her witness statement the claimant gives a detailed account of this conversation and specified that she raised with the second respondent that she believed it may constitute bribery and be a breach of the FCA rules concerning gifting known as inducements. From the claimant's answers to questions, we understand that the bribery is linked to potential overtrading concerns. She told us that she thought a criminal offence was being committed because she believed the gift was being given for another reason that was that the second respondent was trying to win the client over.
104. We find that these concerns about overtrading were not raised by anyone to the claimant for her call the second respondent, nor did she suggest to the second respondent any concerns about the reasoning behind the gift. We find that no such reference was made in this call. Had it been, on the balance of probabilities, we consider that the claimant would have raised that in her follow-up email, and she does not.
105. In her witness statement the claimant states that she reminded the second respondent that as a registered and regulated director of an FCA regulated firm he was aware that what transpired was classed as gifting and may constitute bribery. She told the second respondent that she would have to follow the correct procedure. Her witness statement then says that she had determined it was a potential breach of FCA rules and that she would therefore have to make an official record on the U.K.'s gift register.
106. On her pleaded case the claimant said that she expressly mentioned to the second respondent s.2.3.A of the FCA Conduct of Business Obligations, and in particular s.2.3.A.5 – s.2.3.A.7 concerning inducements. In cross examination the claimant confirmed that she had mentioned these precise sections of the FCA conduct of business obligations in the conversation. In cross examination the claimant also confirmed that she said that there was a legal and regulatory obligation, and she referred to the FCA UK handbook.
107. This is not reflected in her witness statement nor in her follow-up email and on the balance of probabilities we find that she did not give such precise details .The word bribery is used in the follow-up email and in her witness statement the claimant said that she used that word. In her email to the compliance consultant on 2 February she does raise with him that she was under the impression this kind of payment could be classed as bribery and therefore had to be disclosed.
108. On the balance of probabilities we find that the claimant did use the word bribery on her call with the second respondent. We find that any disclosure was limited to the claimant saying she believed it might constitute bribery and also be a breach of FCA rules concerning gifting. She did therefore identify a possible regulatory breach and potential criminal offence that is bribery. The second respondent explained that they had not gifted a holiday but had paid for a nice meal and a couple of nights in a hotel. From the later email which is discussed below the claimant accepted the second respondent's account.

109. Mr Halloway-Churchill told us that he was then contacted by the claimant after a conversation with the second respondent and that she sent an email from her personal email address asking for his comments on a note she was going to send to the second respondent on this point. He told her that he thought the email looked good because he was pleased that she was taking control and in charge.
110. The claimant then sent the second respondent an email on 3 February in which she said that she been assured it was not a form of bribery. She also said that she believes she will need to register the gift in the UK gift register. We find that the claimant has been reassured by her conversation with the second respondent and she no longer believed that there was any potential bribery involved. As far as any regulatory breach is concerned that can be addressed by entering the gift in the UK register and she plans to do that once she has the documentation.
111. The second respondent replied that there was no impropriety of any kind, but he would gather the receipts, and documentation so is all properly documented. The claimant makes the point that she was not provided with receipts before her employment was ended. We find, however, that she did not express any urgency in her request for these receipts. We read her email of 3 February as a request for documentation so that she can make an entry in the UK register. We believe that once the entry was made that would end the matter and there was no reason for the claimant to doubt that the receipts would be forthcoming. We find that at the end of the conversation as confirmed in her email the claimant does not have a reasonable belief that any criminal offence or regulatory breach was likely to occur.
112. Mr Halloway-Churchill confirmed that if it was a client of the UK and the UK entity was giving a gift then he agreed it would be a red flag. It would need to be investigated to make the position clear. He was clear that it would not raise a red flag if London was not involved. He was not told this at the time and simply had to rely on what the claimant was telling him.
113. Mr Halloway-Churchill subsequently advised the respondents that any gift paid for by London had to be recorded in the London gift register, but a gift made by another entity would not be recorded in London. Miss Mistry told us that if the same thing happened now that she was Head of Compliance, she would want to see written approval for the gift and the reason why it was approved. She would also look at the relevant client trading activity around the time of the gift to determine whether anything should be noted on the FCA gift registers. She also told us that all gifts should be noted regardless.
114. We accept Ms Mistry's evidence that it is likely that she would have wanted to record this gift on the UK register. Nonetheless, we accept the evidence of the regulatory consultant as an expert in this field that, despite the fact the client was also client of the UK, a gift from the US entity to a US client would not be the regulatory and recording responsibility of London. The claimant was therefore incorrect in her email to the second respondent to say that it would have to be in the London register.
115. We heard from the evidence of Ms Mistry and Mr Halloway-Churchill that it was a legitimate query for the claimant to raise. The second respondent also agrees that it was reasonable of the claimant to raise this question. We accept that while there had in fact been no wrongdoing, there was the possibility of such depending on whether the gift had been

made from London or not. It was therefore reasonable for the claimant to ask the second respondent about this.

116. While we have accepted the evidence from the compliance expert as to the circumstances of when the gift would be recorded in the London register, nonetheless we have also accepted that Ms Mistry would have recorded this. Even though have found that the claimant knew that the gift had come from a US sales person and she knew that it had not been paid for by the London entity we find that it was reasonable of her to continue to believe that the matter should be recorded on the London website.
117. We also find, however, that while the claimant made an allegation of wrongdoing in the initial call, by the end of the call she was satisfied that there was no potential criminal offence of bribery and any regulatory issue could be addressed by registering the documentation. This is what her follow-up email essentially provides. She confirms that she's been assured that there is no criminal offence of bribery and she is setting out a course of action which will remove any regulatory concern. We also find that she believed she was going to be provided with information to allow her to record matters on the London gift register. That is not identifying that any regulatory breach has occurred. The claimant confirmed that gifts could be given provided that they were on the register. We find that the claimant therefore believed there would also be no regulatory issue as the gift could be put on the register by her retrospectively.

Third alleged protected disclosure

118. The claimant gave evidence that during her employment the second respondent had been seeking potential investors and in December 2020 a 'change in control' (CiC) application was submitted to the FCA notifying the regulator the company structure was changing, and two new investors would be added. The CiC application also brought Mr Mushegh Tovmasyan, a substantial investor into the company.
119. The CiC form in respect of this substantial investors investment in the Group was put together in the USA under the second respondent supervision and signed by him on 17 December 2020.
120. In a witness statement the claimant explained that on or around the 20 January 2022 the claimant and Mr Halloway-Churchill were having a discussion about the upcoming potential change of control regarding the Edgewater deal. He asked about the last change in control concerning the substantial investor. He then contacted her regarding a document he discovered online.
121. Mr Halloway-Churchill's evidence is slightly different. He told us that the claimant was angry and upset about the substantial investor's involvement in the Group and on a call with him in December 2021 she referred to him as a criminal who should not be involved. It was his response that the FCA had allowed the CiC to go through therefore nothing suggested he was a criminal .In response the claimant told him to keep digging as she was sure there was something.
122. It was as a result of this conversation that he rechecked the investors entries on the FCA and told the claimant that he was "clean". He made a file note of this at the time in which he records the claimant is fishing for bad actions.
123. We were taken to an exchange of texts between the claimant and Mr Halloway-Churchill. The claimant explained that she had texted details of

the substantial investor' s correct name. She then explained that this was the new shareholder and she made reference to Blue isle being the client under investigation by all the regulators. Mr Halloway-Churchill replies saying it looks as if the substantial investor had a class action against him in Puerto Rico July 2021. Mr Halloway-Churchill accepted that if the claimant discovered that the substantial investor had been involved in a class action for fraud she was entitled to raise that.

124. The claimant's recollection that she asked for an explanation of what a class action was and that she was sent a link to an ex parte application issued by the United States District Ct, District of Puerto Rico dated 20 August 2021. The claimant suggests that she was sent this on 20 January.

125. It is agreed that the claimant contacted the second respondent by telephone on 2 February 2022 to raise concerns regarding the appointment of Mushegh Tovmasyan as a shareholder of the first respondent.

126. It is agreed that the document stated that on 20 August 2021, a US Court had granted 25 petitioners an order authorising them to serve subpoenas and conduct discovery from the substantial investor for use in expected proceedings before the High Court of England and Wales against Equiti Capital UK Limited for its role in allegedly facilitating and concealing fraud.

127. It is also agreed that during their conversation on 2 February 2022, the claimant informed the second respondent that the first respondent had a duty to notify the FCA of the proceedings in which the substantial investor was involved. On her pleaded case the claimant says that she went further than this and specified that on the call she was identifying that the first respondent was failing to comply with a legal obligation under the FCA Handbook SU P 15.3.1 in failing to notify the FCA concerning a claim of fraud that in her reasonable belief had been brought against a major shareholder of the first respondent in a foreign jurisdiction. On the balance of probabilities we find it unlikely that she was as specific as this, but it is accepted and agreed that she had raised regulatory breach if the FCA were not notified of this court order as the area of her concern.

128. Following the call on 3 February the claimant then sent the second respondent an email with the link to the Puerto Rico order that had been discussed. She states that it was concerning her which is why she bought it the second respondent's attention yesterday but thankfully he had reassured her that everything was fine and there were no concerns.

129. The claimant gave evidence that there was a telephone call on that day, 3 February, after she had emailed the link to the legal document. It was her evidence that she was told that the second respondent was fully aware of the existence of the document and had known about it for many months prior to submission of the change control application. He been told by the substantial investor the civil suit did not involve him.

130. The claimant's witness statement said that she explained that the order of the US court entitling the petitioners to serve subpoenas and conduct discovery was made on 20 August 2021 and related to litigation that had yet to be started. It could not therefore be litigation the FCA were aware of when the application was approved in April 2021. In her witness statement the claimant explains that the Puerto Rico document contained information showing a class action for fraud and named the substantial investor and two other entities. The document alleged that a company called Blue Isle committed investor fraud and that Equiti UK Ltd, a

company which the substantial investor was a shareholder, was involved in the facilitating and concealing of the fraud. She states that she also reiterated it was their duty to notify the FCA of the accusation, especially since the first respondent might undergo another change in controller.

131. The second respondent replied in an email on 4 February 2022 that he had been made aware of the litigation by the substantial investor many months ago and that the substantial investor had assured the second respondent that he had cooperated fully with his discovery obligations. In the same email the second respondent informed the claimant that the situation did not give him cause for concern. The second respondent also stated that the proceedings in question were initiated prior to the investors FCA approval in April 2021 and therefore the FCA would have been aware of the litigation before granting approval.

132. The bundle contains a Telegraph article which is dated November 2020 which appears to have been sent by the second respondent to the claimant. That refers to documents filed at the High Court in London this month i.e. November, relating to Equiti Capital's knowledge of the alleged fraud. We accept that the newspaper article refers to proceedings having been issued whereas the legal document from Puerto Rico which is several months later refers to legal proceedings yet to be initiated. We find that the respondents had not fully investigated this and had simply asked the substantial investor for his opinion. It is unclear whether the legal document refers to other proceedings or the existing ones.

133. Once she was sent this Telegraph article the claimant responded to that thanking him for reassuring her with the below case. As of 4 February, we find that she was content with the position.

134. The claimant in her witness evidence states that she was ordered by the second respondent not to continue with any further investigations, and she was not allowed to notify the FCA. The claimant had previously accepted that she had not generally put things in writing, but started to do so once she became concerned about serious regulatory breaches. There is nothing in writing to her back to the second respondent recording that she is not to go to the FCA or identifying that she still has concerns. On the balance of probabilities we find it unlikely that such an instruction was given without it having been recorded in writing by the claimant or being raised by the claimant in later conversations with the second respondent or the regulatory advisor as it is a very significant restriction of her obligations.

135. The claimant told us that she had read the legal document at the time but may not have entirely understood it. She was not really sure what a class action was. When she was taken to parts of the document itself in cross-examination, she was unable to clarify her understanding of what the document actually said. She relied on the fact that she believed there was a class action because that was the information had been given to her by the regulatory advisor.

136. We find that on its face, the legal document specifies that no proceedings are expected to be taken against the substantial investor. It also specifies that he is outside the territorial reach of the courts of England and Wales. It does not specify that this is a class action against the substantial investor. It makes it clear he is not expected to be involved in this class action.

137. While we accept the claimant was told this was a class action by the regulatory advisor we find that as she had read the document as an individual experienced in finance market and as head of compliance it

would be reasonable for her to understand that the class action did not involve the substantial investor. We also find that on her own evidence she was able to identify the dates and give some information about the court order to the second respondent. We find that it was not reasonable for her to understand that this court document was evidence that the substantial investor was facing an allegation of fraud against himself.

138. We find, however, that there is a discrepancy on the dates which the respondent did not fully address in its reply to her. In cross-examination much was made of this discrepancy between the dates. In our view it would have been reasonable for the claimant to believe that as this matter postdated the FCA compliance checks it was something that the FCA may not have been aware of.

139. However, her claim is that she believed that the information she provided, which was the court order, tended to show the first respondent was not complying with a legal obligation which was a failure to notify the FCA concerning the claim of fraud that in the claimant's reasonable belief had been brought against a major shareholder in a foreign jurisdiction.

140. We have found that she could not reasonably have thought that a claim for fraud was being brought against a major shareholder in a foreign jurisdiction from her reading of the court document. It expressly states he will not be party to any proceedings. It does not really matter what the reason for that is. The application is for discovery.

The Fourth Alleged Protected Disclosure

141. The second respondent explained that in mid-to-late 2021 they were trying to launch a new website for the group they could use one brand for the whole group. They wanted to move to one domain. By late 2021 the website was live. In order to ensure that clients were directed to the appropriate pages they had icons at the top of each page identifying each entity.

142. The claimant's witness statement stated on 1 February 2022 a potential client contacted the group. The client was UK-based and was having difficulty finding the relevant application. To assist the client, she opened the group's new website and while browsing noted there was a clear and critical error. She immediately wrote an email to the second respondent and to Mr Gooch notifying of that error and asked for the contact details of the website creation team. She was supplied with these details, and she contacted the website team about the error and a few hours later it was rectified. She was then asked by a member of the website team if she had noted anything else the website could she notify him. She agreed that she would.

143. On 2 February she then began initial review of the website. She noticed several errors and therefore asked Ms Mistry to assist her. They spent some hours on this. Mr Halloway-Churchill accepted that he had given advice to the claimant regarding the changes that needed to be made to the website and accepted that these points need to be raised to the respondents. He also agreed that if steps were not taken to make the corrections it's possible the respondent would be in breach of regulatory requirements.

144. It is agreed that the claimant contacted the second respondent and Mr Gooch by email on 3 February 2022 to raise various concerns about the website. The email started by saying here are some things we notice on

the website, just want to point out… Happy to have a call to go through. Her commentary on some of the errors refers to the website being misleading as clients could potentially believe that they were on the website of an FCA entity but they may be in the Bermuda retail site. The respondents admit, for the purposes of these proceedings, that this disclosure amounted to a qualifying disclosure within the meaning of s.43B of the ERA.

145. It was not pleaded by the claimant that her belief was that a criminal offence had been committed or is likely to be committed. She relies on this being a breach of FCA regulations concerning onboarding of clients via UK an FCA regulated entity.

146. The issues list makes reference to the claimant emailing the second respondent again on 3 February. There was no such second email in the bundle. The second respondent responded to the claimant's concerns by email on 3 February.

147. On 10 February 2022, the second respondent sent the claimant an email saying that he had a lengthy call that day regarding the website and was making several changes for each entity to make it more partitioned. The claimant responded thanking the second respondent for taking into account her suggestions and the second respondent replied to say that the website is, and has been, a work in progress and some updates were still pending.

148. We accept the claimant's evidence that she began the review having been made aware of an error. We accept that it was part of her role to carry out such reviews. We find that she had a reasonable belief that the uncorrected website could lead to regulatory breaches.

149. In answer to cross-examination questions the claimant suggested that every single one of the errors that had been made were deliberate. She did not differentiate between those errors that were typographical and those that were more significant. As the claimant had been invited to identify the errors and update the IT team with any corrections, on the balance of probabilities, we find it highly unlikely that the errors were deliberate.

150. The claimant brings as a detriment what she says is the first and second respondent's failure to include her in rectifying issues on the website that she had identified. We can see from the course of correspondence that she was updated as to the second respondent's reaction. There is no evidence that she was not included and we find that there was no failure to include her in rectifying the issues on the website that she had identified.

<u>Call on 15 February and letter of 16 February – detriments</u>

151. The claimant told us on 15 February she and the second respondent spoke on the telephone and one topic was her salary. In that call she said that she also raised potential rule breaking, but did not specify what. The claimant said that the second respondent then told her abruptly that "she was not the right person to take advanced market's forward they could not see her as part of the foundation for the future. He also told her that he could not trust her anymore.

152. The second respondent agreed that this conversation had taken place about the claimant's salary demands. He confirmed that he had lost trust with the claimant in November and felt that he could not rely on her not to

resign again. He accepts that he said that he could not trust her not to resign again, but he did not tell her that he could not trust her as a long-term solution to operate the UK entity.

153. We accept the second respondent's evidence that his comment was made in the context of what we have found to be the claimant's resignation in November and was not related to the protected disclosures. We accept that this is what he had in mind which is an event that predated any of the alleged protected disclosures. They cannot be connected.

154. We find that the focus of the claimant's attention was her pay. That is what is set out in the letter that are sent a follow-up to this call and we find therefore that the rule breaking that the claimant refers to was not raised. It was not therefore any part of the context in which the second respondent made his comment.

155. On 16 February 2022, the claimant sent the second respondent a long email setting out her concerns about her salary level and the fact that she did not feel it was appropriate for the number of regulatory functions and therefore responsibility that she held. That email specified that the claimant felt that she was *"grossly underpaid"* . It said that she proposed she would happily continue all the functions for the first respondent provided she was paid accordingly to UK salaries. Therefore, an annual salary of £300,000 would be appropriate. The letter is described by the claimant in its opening as being based on the conversation the day before and confirmed they will discuss the salary issue on Sunday when they meet in Dubai.

156. On the balance of probabilities, we find that had the second respondent made the comment that she was not part of the future and had lost trust in her that would be part of the letter. On the contrary, the opening sentence of that letter talks about future plans and does not make any comment that the claimant is not be part of them. We find that she would have made some such comment had she really been told there was no pot for her in the future. Further it would make little sense for the claimant to be coming to Dubai to continue to meet the second respondent about salary. We therefore find that second respondent did not make the comments as the claimant sets out. He merely said that he did not trust her not resign again. This is in line with his belief that the claimant had resigned previously.

157. It was agreed that the claimant had sent a draft of this letter to Mr Halloway-Churchill before sending it to the second respondent and he had confirmed that it was a good letter. He explained in his evidence that he said this is a good letter because he wanted her to send this letter. He believed it was important that she bring matters to a head because she was driving with him and his wife completely mad. He wanted her to have the dialogue and take responsibility for her role. He did not advise her to take this step. In fact, he was telling her not to do this and that she should accept the money that she was earning and enjoy her life.

158. Mr Halloway-Churchill told us that he believed the claimant in sending this letter was seeking to get laid off and he thought it was a good letter to achieve that aim if she wanted to bring things into the open and have a dialogue. On 16 February the claimant exchanged some texts with her husband in which they discussed her sending this letter. In these she identifies that she felt bad having to send the second respondent such a formal letter but she had to do it otherwise he would continue to abuse his power with her and continue not paying her.

159. The letter made reference in general terms to any breaking of the rules would be blamed especially on her. The claimant did not in this letter make reference to any of the matters that she now relies on as protected disclosures. On the balance of probabilities, we find that had these events figured in her mind in this way at the time, then they would have been compelling evidence to support her claim for more money based on that responsibility. We find that the fact that there is no refence to them means the claimant did not at the time consider them as serious as she now sets out.
160. The letter also specifies that she visited the second respondent in November to discuss her salary. She specifies that at that time he refused to understand the situation to be placed into an she requested to him her desire to relinquish the SMF 16/17 functions as she did not feel comfortable continuing to perform them. She says again that she mentioned in November she did not want to hold these functions as she did not receive the correct justified salary to compensate for the role. We find this supports our view that she did in fact resign in the November conversation.
161. The claimant specifies that she is proposing she would happily continue all the functions for the first respondent provided that she was paid according to UK salaries and asks for a salary of £300,000.
162. The second respondent took this as an ultimatum. Mr Gooch, who was provided with a copy of the letter by the second respondent took it to mean that the claimant would no longer agree to hold her regulatory functions unless her salary was increased to £300,000 per annum. The claimant's evidence was that her letter did not mean that. It meant that she would unhappily continue with her role she did not receive the money.
163. We find that it was reasonable for the respondents to receive the claimant's letter as an ultimatum. We find that on its face the document does specify in effect that she would continue the role if she got a pay rise and therefore the opposite applies. She would not continue the role if she did not get the pay rise she wanted to £300,000. It was reasonable for the second respondent to conclude that if he refused the request the claimant would leave.
164. In her letter of 16 February 2022, she also makes reference to having been given a timeframe for the Edgewater deal to be completed which she comments has passed and three months later she was still being underpaid.
165. The claimant confirmed that in the call she had with the second respondent on 16 February he told her that there was still no end date. The claimant commented that her risk to reward ratio still not in her favour. We find that the potential of the deal was discussed at a meeting between the claimant and the second respondent on 11 November 2021 at that point was expected that it would conclude that month. We also find that by February 2022 the claimant had concluded it was not going to happen. The potential deal with Edgewater was not therefore a reason for her to remain in the business.

<u>The trip to Dubai</u>

166. It is agreed that the claimant flew to Dubai on 19 February 2022 for the FP Expo event, together with her family. This was a few days after she had sent her letter 16 February 2022 asking for more pay where she had proposed that she would happily continue all the functions for the first respondent provided she was paid accordingly to UK salaries and an annual salary of £300,000 would be appropriate.

Meeting on 20 February at a restaurant

167. The claimant and the second respondent met in a restaurant in Dubai on 20 February. Accounts differ with the claimant stating she was subject to verbal attacks by the second respondent during this meeting with the second respondent accusing her of trying to frame him and destroy his reputation. On her account the second respondent kept telling her to resign over and over again and she would reply that she could not.
168. It was the claimant's evidence that with every refusal to resign the second respondent became angrier and said that she was trying to frame him. She says that he became so enraged when he saw her handbag on the table, he accused her of recording the conversation before striking her bag. In a witness statement the claimant said that he struck it from the table. In answer to questions from the panel she told us that she caught before it fell from the table. This was about two thirds of the way through the meeting. He then said he had to leave as he was late for a meeting but that he would meet her again on the 22 February. On her account she was tearful by the end of the meeting partly because she'd been accused of recording the meeting.
169. The second respondent's account of this meeting is very different. He explained that he was staying in the same hotel as the claimant and had an 8 o'clock meeting for which he was being picked up from the hotel. It seemed therefore sensible to meet in the restaurant. This was at 6 PM on a Sunday evening and on his account, there were hardly any people in the restaurant and none that he recognised. He thought there were maybe three or four other diners in the room. He was meeting the claimant before his subsequent meeting. He wanted to discuss how they could move forward after her demand letter.
170. In this meeting he did not shout or raise his voice. At the beginning of the meeting they did joke about whether she was recording it. He explained that they were talking about how to move forward when the claimant was now documenting the conversations, and he jokingly said had no you're not recording me now appointed at a handbag. They both laughed. This was a reference to her behaviour change and had nothing to do with the meeting or her dismissal, it was a joke. He did not knock the claimant's purse on the floor.
171. The claimant reiterated that she was threatening to resign as she was not being paid enough. He kept asking her how to move forward. It was an amicable conversation over two hours during which she never raised his voice. The claimant was not in tears when he left. They said goodbye and she said that she will take care of the bill as she held the corporate card. He was able to see that there were no tears in her eyes. He agreed he did leave as he had to go to another meeting, and they were to meet again on 22 February.
172. Ms Kambouris told us that she met with the claimant that same evening and the claimant then told her that during the meeting the second

respondent had yelled at her and thrown her purse across the table. It was her evidence that it was also suggested to her by the claimant that the second respondent was trying to push her out by bringing in new employees at high salaries and he might be doing the same with her. Ms Mistry confirmed that the claimant had also met with her separately and also told her that the second respondent had thrown her purse across the table.

173. On the morning of 21 February Ms Mistry, Miss Kambouris and the claimant met for breakfast. Ms Mistry told us that the claimant repeated the issue of the bag again being knocked on the floor.

174. Ms Kambouris told us that she was concerned about the claimant's statements to her and therefore she spoke with the second respondent and asked if he had done what the claimant had said, that is shouted out to try to force her to resign and pushed her bag onto the floor. Ms Kambouris also asked that if the second respondent was trying to push her out, he should let her know. She was reassured by his answers and concluded that the claimant had lied to her.

175. The accuracy of Ms Kambouris evidence was challenged. She had said that the claimant had also raised with her that the second respondent had a problem with women and that she might be effectively on his hit list when the claimant stayed with her in Greece. After the claimant's dismissal Miss Kambouris was asked for details of what happened in Greece. She was expressly asked whether the claimant had said anything specific to make her believe that the second respondent was being unfair to female staff. Ms Kambouris did not at that time mention this conversation in Greece. Her explanation was that she did not know why she was being asked these questions or that she had to go into detail. It was put to her that the subject of the enquiries being made was clear is identified as the claimant's tribunal claim. It was also put to her that it was not credible that she would not provide this detail.

176. On the claimant's case Ms Kambouris is to be believed when she recounts the details of her conversation with the claimant about the bag incident in the restaurant, but is not to be believed when she recounts a conversation she said occurred in Greece. The second respondent confirmed that Ms Kambouris had the conversation with him that she reports.

177. We accept that Ms Kambouris was unclear about who was asking her for details of previous conversations with the second respondent when the dismissal was being investigated. On the balance of probabilities we accept her evidence. We therefore find that the claimant had suggested to Ms Kambouris that the second respondent might be trying to push out and that she was so concerned about this but she raised it with the second respondent when they were in Dubai.

178. On the balance of probabilities we also prefer the account of the second respondent over that of the claimant as to what occurred in the restaurant. It does not seem likely to us that the claimant would have sat and endured two hours of verbal abuse which brought to the point of tears in a crowded restaurant. It does not seem likely that any individual would behave in such a way in public view of what the claimant said were other industry figures. It also seems to us unlikely that the claimant would have agreed to meet the second respondent some two days later to continue the discussion.

179. That does seem to be a likely outcome if we accept the second respondent's account of events as a further meeting would be needed to

see if matters could be taken further forward. We have also generally found the second respondent to be a credible witness whereas the claimant's account of events as set out above has been less credible on a number of instances. We take into account that until cross examination the claimant was maintaining that the second respondent was physically abusive in this meeting and then withdrew that allegation. We find that is part of her exaggeration of the events of that day.

180. We find that second respondent did not verbally attack and berate the claimant. He did not tell the claimant to resign or accuse her of trying to frame him. He did not repeatedly tell her to resign. He did not threaten her with damage from the FCA and reputational damage if she did not resign.

Events leading up to the 22nd February dismissal

181. The second respondent also met with Ms Mistry sometime on 21 February. In that meeting he said that two topics came up. The first was about training and the second was about working from home. When the second respondent asked Ms Mistry to take on a compliance role she explained to him that she did not feel ready as she had not had sufficient training. She explained that she was in the middle of the diploma which had only been approved her to complete in the summer of 2021. She told the second respondent that she first asked to be allowed to do this in April 2019 but the claimant told a number of occasions every couple of years that you are the second respondent to prove the course and he had refused. It was the second respondent's evidence that this had not occurred. Any refusal was done by the claimant.

182. The second respondent said that he was also told by Ms Mistry that he had said that staff were not permitted to work from home when in fact he had told the claimant she should decide whether staff could work from home and it was the claimant who is making these decisions. His evidence is confirmed by Ms Mistry. The second respondent was clear that he had neither blocked training nor prevented staff from working from home. We accept his evidence on this point.

183. By the time the second respondent met with the claimant on 22 February he had spoken to both Ms Kambouris and Ms Mistry. On his account he understood the claimant had been telling people he was trying to force her to resign, he was aware that the claimant had unsettled Ms Kambouris and believed that the claimant had lied to Ms Mistry. He concluded that the claimant was poisoning others, was upset by what he believed to be her lies and therefore decided that she needed to leave the group as quickly as possible.

184. While he had left the meeting on the 20th prepared to discuss matters again with the claimant, things had changed by the 22nd. He realised that the claimant had been lying and creating discord. She was not only creating a distraction but was now creating toxicity there was no way he could find to work with her again. He could not even sit in the same room with her. He therefore prepared the letter terminating employment before he met with her and then went into the meeting with that already to give her. We note that the second respondent's reaction when angered by the claimant was to avoid conversation with her. We find that also supports our view that he did not shout at her on previous occasions.

185. The second respondent was asked whether the "four traps" i.e. the emails relating to what is said to be protected disclosures 1 to 3, were in his mind when he decided to dismiss the claimant and he said that they

were not. We note that the alleged fourth protected disclosure, that is the website, were not said by the witness to be in his mind at all. We accepted evidence on this point. He had no concerns about the disclosures the claimant now relies on and what he was interested in was reliability to continue to hold the functions and he now had no faith in her doing that because of her behaviour.

186. At the meeting 22 February he therefore told the claimant he would not meet her salary demands and would accept her resignation. The claimant said she would not resign. The second respondent was surprised by this as he simply felt he was encouraging her to follow through on what she said in November.

187. Once the claimant said that she would not resign the second respondent said he would have to notify the FCA if her employment was terminated and it would be better for her CV if she resigned. The conversation was very short perhaps no more than a few minutes.

188. We accept that the offer to allow the claimant to resign rather than be dismissed was not a threat. It was offered as a better alternative and for the reason explained to the claimant at the time, that is it was felt to be better for her CV if she was able to say she had resigned rather than be dismissed. We find that this offer was made out of concern for the claimant and was in no way related to the protected disclosures..

189. It is accepted that the meeting to dismiss the claimant took place in a public area. It was described as a lobby in the lounge near the restaurant. We do not find that there was a deliberate attempt to damage the claimant's reputation by dismissing her publicly. She was not dismissed in a meeting room, but we find that it was done in a private manner.

190. The claimant tells us that because she was at an industry conference and because her meetings didn't take place it was very visible to everybody that she was dismissed. We've accepted the second respondent's evidence that he was looking for a way forward and therefore there was no deliberate intention to dismiss her at this conference. We find that the first and second respondent did not contrive to ruin the claimant's reputation. Instead they attempted to help her safeguard her reputation by offering her an alternative to dismissal which she refused. This offer was again repeated as the claimant was sent an email timed at 4.49 on the same day giving six months' notice. This gave her the option of submitting a letter of resignation or him issuing a termination letter. We find that the first and second respondent's intention was exactly the opposite and it was not seeking to impact the claimant's reputation at all.

191. The claimant requested written reasons for dismissal and the second respondent responded on 9 March concluding that the principal reason for dismissal the company concluded to have been a complete loss of trust and confidence in her the way she conducted herself that the discussions in November 2021 had created a situation where was impossible to continue her employment in the best interest of the company. This was said to be based on discussions in November 2021, the last straw being discussions prior to the Dubai trip on 15 February and the two hour meeting on the 20th February meeting culminating in what was described as a dismissal meeting on 22 February. We find that this was written reasons for dismissal. These were given to the claimant in answer to her request but it appears that she did not receive this first response on 9 March but was sent to her work email address to which she no longer had access.

192. On 16 March a further detailed letter was sent as set out below. It details the history of the second respondent thinking and includes a number of matters. This considerably expanded the position from the details given on 9 March. It appears this occurred after a conversation and/or advice from the regulatory consultant to the second respondent.
193. We also find that this letter 16 March were written reasons for dismissal. Respondent did therefore respond on two occasions to the claimant's request for such written reasons.
194. In that second letter the second respondent stated as follows

"Given your role as a statutory director of the UK company with the fiduciary duties you owe as a result, as well as the importance of your compliance role to the legitimate functioning of the UK business, I took your threats regarding the non-performance of your duties extremely seriously. I began to Formulate the view that, given your seniority and the important duties and functions you carry out as head of the UK business, I could not risk the future of the UK business by allowing you to continue in your role, as an employee of your role and level of seniority acting on threats to refuse to perform the main functions of your role could be detrimental to the UK business.
At a meeting between us in Dubai on 20th February 2022, you again confirmed that you did not want to remain responsible for the control functions, which formed the main purpose of your role within the UK business, unless the UK company would meet your demands in relation to your proposed salary increase. I explained that due to some of the events that had come to light since our meeting in November 2021, the relationship of trust and confidence between us had been damaged to a point which was irreconcilable. Despite my best efforts to explain again the rationale behind the Company's position with regards your salary, it became clear to me that the UK company could not meet your demands. I viewed the meeting as a further example of you "toying" with the company in an attempt to achieve an unrealistic and unjustifiable salary increase for your role type, which in the context of the ever-growing rift between us led me to question whether your continued employment was in the UK company's best interests.
• We met again in Dubai on 22nd February 2022. 1 had considered the situation carefully during the period between the 20th February and 22nd February meetings. I was also made aware of further conversations you had had with other staff where you had attempted to undermine me and destabilize the business by spreading false information within the Uk workforce. For example, an employee within the onboarding business told me you had informed them that I had been preventing them from attending training courses with a view to taking on a compliance role, when in fact, this had never even been brought to my attention, and it was you that was preventing the said employee from attending the training courses. However, you had informed the employee that this was on my instructions. You also fabricated the tone of our meeting on the 20th February to other staff by stating that I pressed you to resign, I was loud, and swatted your purse off the table. All of these things are completely false as we had a very cordial discussion for 2 hours. We ended the 20th February conversation by saying we would finish the conversation on the 22nd February, as I had to leave to a dinner meeting and we both had full days the 21st February. The fact that I couldnt even have a casual sit down with you without you attempting to fabricate and sensationalize anything discussed, proved very difficult for me to fathom continuing a productive working relationship when you, again, demonstrated yourself to be untrustworthy.
When we met on the 22nd February 2022, 1 informed you that I was of the view that the relationship between us had broken down entirely. I also made it clear that the UK company could not meet your salary demands, and on that basis, I would now be willing to accept your resignation, which you previously informed me you would tender should we refuse to give you the requested pay rise. I also explained that by resigning, you would avoid a situation where we would have to declare the reasons for your dismissal to the FCA in the UK, which might have had an adverse effect on your employment opportunities going forward. You declined and handed me the ultimatum of giving you the unrealistic pay rise you requested or terminating your employment. By this stage, I was of the view that there were

irreconcilable differences between us which would significantly impact the UK business going forward. I also considered your attempts to undermine me and destabilize the UK business as constituting a breach of the fiduciary duties you owe to the company as a statutory director. On that basis I decided that it simply was not possible to continue your employment and that the termination of your employment was in the UK company's best interests."

195. The reasons now include the claimant's lies about what happened in the meeting between them on 20 February and what the second respondent has uncovered as her spreading false information to UK staff.
196. The claimant complains that she was not provided with a reason for dismissal. It is the case that she was provided only with verbal reasons originally but these were expanded on in two subsequent letters. We find that the respondent's reason for failure to provide the written reasons immediately was a lack of understanding of UK law. We also find that the reasons that the second respondent set out in detail reflect what was in his mind at the time he dismissed the claimant. They are not sham reasons. They reflect his honest thought processes and the reason for his decision.
197. The claimant was given six months' notice of dismissal as that was her notice period.

Reason for dismissal

198. We were taken at some length to regulatory sanctions that Mr Gooch and the second respondent had been given by the National Futures Association (NFA) in 2007. Both accepted that the complaint included up to 9 complaints about misleading and deceptive websites. We were told that only one of the complaints was about Advanced Markets Inc website, the rest being about third party websites which are linked to the US company's website.
199. It was not disputed that the NFA fined Advanced Markets Inc $150,000 and that both Mr Gooch and the second respondent accepted that they had originally denied all of the allegations but that ultimately as the document makes it clear they consented to the inclusion of finding the decision that they had committed the violations alleged. Again as was clear from the document the decision was reached as a result of a settlement.
200. It was suggested that as Mr Gooch had in answer to cross examination questions originally said that he would not jeopardise regulatory standing in any jurisdiction and then quickly changed his answer to he would not intentionally do so that he had been caught out in a lie. It was similarly put that individuals who had accepted they had committed these violations were essentially not credible as witnesses.
201. It was suggested that individuals had already been fined for such breaches were liable to create issues with their website again and that they would be extremely concerned when an individual raised matters about a website which was presenting misleading information. It was put that it was likely they would react negatively to the individual, in this case the claimant raising such matters.
202. It was suggested therefore that the evidence of Mr Gooch and the second respondent should not be preferred over that of the claimant. Further it was suggested that it was not credible that the protected disclosures or the traps that the second respondent had identified being set for him were not in his mind when he dismissed her. Even though he

had not identified the fourth protected disclosure as one of these traps, as set out above he was likely to react extremely negatively to anyone who raised complaints about a website given his history with misleading websites.

203. In the findings of facts we have made to this point we have set out the reasons why we have preferred accounts the respondent's witnesses over that of the claimant where this has happened. We do not accept that having previously settled the matter with the NSA that the witnesses are not credible. That would mean that individuals who are subject to any regulatory procedure can never be trusted to be credible in respect of any other type of procedure. We have found both Mr Gooch and the second respondent to be consistent in their accounts.

204. We find that there was an ongoing erosion of trust and confidence based on the salary discussions and what was believed by the second respondent to be the claimant's threats that she would resign if she were not paid an amount of money he felt was unrealistic. We accept that the beginning of loss of confidence was the November resignation.

205. While the second respondent said he had no concerns about disclosures we find that they were in his mind on the 20th because of the reference he accepts he made to the documenting of conversations when he made what he says was the joke about the handbag. However, his evidence which we accept was that it was not the alleged breaches that she had raised which were of concern but the fact that the claimant's behaviour had changed and that she was documenting things in an inaccurate way. That was what he felt was the trap rather than the nature of the disclosures. This change in conduct was part of the deterioration of his trust in her which culminated in his complete loss of trust and confidence in her once he became aware of what she was saying about him.

206. We also find that the behaviour of the claimant about three of the matters relied on by the claimant as protected disclosures contributed to the second respondent sense of unease about the claimant and therefore his confidence in her. Nonetheless, it was her demand in February and a reiteration that demand in the meeting 20 February that made him consider dismissal. However, the relationship could have continued despite that.

207. We find that the tipping point between being prepared to have a further conversation with the claimant about ways forward which is how matters were left on the 20th to his decision to dismiss on the 22nd was based on second respondent considering he could no longer trust the claimant. He could not have someone in such a senior position one of the London office when he could not trust them. We accept that the matters he set out in the longer letter are a genuine reflection of his thought processes at the time.

208. We find that the dismissal had nothing whatsoever to do with the alleged protected disclosures. What made the final decision was the discovery of the claimant's conduct which, because it involved lying about the second respondent, he could not tolerate. Those matters are entirely unrelated to any disclosures. We find that the second respondent would have been prepared to continue to seek a way forward with the claimant were it not for his discovery of this information. That means that despite the disclosures the relationship could have continued. It was other unrelated conduct that spelt the end.

209. We find, in terms of process, that the claimant was not given proper opportunity to put her side of the case prior to the dismissal. We find that this was because the second respondent was unaware of the UK requirements for process and was not for any other reason.

The claimant's appeal/investigation

210. The claimant appealed against the decision to terminate her employment on 14 March 2022. This was before she received the full reasons for her dismissal. On 24 March it was confirmed that Michael Cairns would be chairing the appeal process. It is agreed that his investigation into the dismissal was concluded on 2 May the investigation report was sent the claimant on 4 May along with a formal invitation to an appeal hearing.
211. Between the 18th and 23rd of May the claimant and Mr Cairns exchanged various emails about the appeal hearing 24 May the claimant confirmed she did not see the sense in continuing with the appeal process. A dismissal appeal hearing was held on 26 May in the claimant's absence following which an appeal outcome letter, dismissing her appeal, was sent to the claimant the same day.
212. Mr Cairns reached the conclusion that there were no regulatory breaches. He also concluded that the claimant's dismissal was not because of any of the disclosures that she had made.
213. In cross-examination he was asked a question about imaginary secondary legislation and it was submitted that his credibility as an appeal officer was utterly destroyed when he expressed knowledge of certain regulations did not exist. On this basis it was suggested that no reliance whatsoever could be placed upon the supposed integrity of the appeal process. We do not agree. On balance we find that Mr Cairns understood the question that was put to him to refer to regulations on the topic rather than a specific rule.
214. We accept that Mr Cairns was aware in general terms of the licence conditions. We find that his knowledge was outline only and that he was not aware of specifics.
215. This investigation was not carried out directly by Mr Cairns and we find that it was a sufficient one with all the appropriate people being spoken to. We find that it was not a sham investigation, but a sufficient one given that it did not have the claimant's input. We accept that for good reasons she chose not to be involved.
216. While the claimant had not raised the specific points that the second respondent set out with the reasons for dismissal (i.e. handbag incident et cetera) because she had not been given this information before she was in her appeal letter, nonetheless Mr Cairns dealt with these. We find that he carried out a sufficiently robust appeal hearing.

Other detriments

217. We have addressed many of the factual matters relied on by the claimant as detriments in chronological order. The following matters, however, have not been dealt with.
218. There is a complaint of detriment that is said to be the claimant having duties removed from her including the search for new premises or around 17 February 2022.

219. It is agreed that the respondent was considering new premises and that as the managing director of London entity it was part of the claimant's role to identify and find these. It is agreed that the second respondent also asked the Head of Risk if he could look for offices. The claimant took the second respondent's email as one giving part of her role to someone else. We accept the second respondent's explanation which is supported by the words of the email itself. He was simply asking for somebody else's input in addition to the claimant. We find that the claimant did not have any duties removed.
220. The claimant says that she was subjected to detriment because she was not invited to the usual company meetings. As we have noted earlier, she was unhappy about not being involved in meetings, but this was prior to the date of any disclosures on which she relies.
221. The claimant states that the Second Respondent began to be rude and argumentative towards the Claimant as set out at paragraph 67 AGOC. This paragraph in the pleadings refers to it occurring after the protected disclosures were made. In her evidence the claimant suggested that it was 3 February call. We have addressed that specific call.
222. We have found no evidence that the second respondent acted in this way on any other occasion. His doing so would be contradictory to him wanting the claimant to come to Dubai to continue conversations with her. The claimant also commented a number of occasions about how much she loved working with the second respondent. Indeed she states this in the letter of 15 February. She does not raise his conduct in her appeal letter or any correspondence during her employment. We find that conduct during her employment is at odds with the claim she now makes about the second respondent's behaviour. For all these reasons we find that the second respondent did not act in any such way.

Relevant Law /submissions

Whistleblowing

223. Whether a whistle-blower qualifies for protection depends on satisfying the following tests: Have they made a qualifying disclosure? There are a number of requirements for a qualifying disclosure (section 43B, ERA 1996):

a) Disclosure of information. The worker must make a disclosure of information. Merely gathering evidence or threatening to make a disclosure is not sufficient.

b) Subject matter of disclosure. The information must relate to one of six types of "relevant failure".

i. that a criminal offence has been committed, is being committed or is likely to be committed,
ii. that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
iii. that a miscarriage of justice has occurred, is occurring or is likely to occur,

iv. that the health or safety of any individual has been, is being or is likely to be endangered,
v. that the environment has been, is being or is likely to be damaged, or
vi. that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed"

c) Reasonable belief. The worker must have a reasonable belief that the information tends to show one of the relevant failures.

d) Further, the worker must have a reasonable belief that the disclosure is in the public interest .

224. Disclosure must also qualify as a protected disclosure (sections 43C-43H, ERA 1996; which broadly depends on the identity of the person to whom disclosure is made. PIDA encourages disclosure to the worker's employer (internal disclosure) as the primary method of whistleblowing. Disclosure to third parties (external disclosure) may be protected if more stringent conditions are met.

225. Counsel for the claimant in written submissions referred us to the EAT's decision in Parsons v Airplus International Ltd UKEAT/0111/17:

> *"23. As to whether or not a disclosure is a protected disclosure, the following points can be made:*
>
> *23.1. This is a matter to be determined objectively; see paragraph 80,* ***Beatt v Croydon Health Services NHS Trust [2017] IRLR 748 CA****.*
>
> *23.2. More than one communication might need to be considered together to answer the question whether a protected disclosure has been made;* ***Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540 EAT****.*
>
> *23.3. The disclosure has to be of information, not simply the making of an accusation or statement of opinion;* ***Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38 EAT****. That said, an accusation or statement of opinion may include or be made alongside a disclosure of information: the answer will be fact sensitive but the question for the ET is clear: has there been a disclosure of information?;* ***Kilraine v London Borough of Wandsworth [2016] IRLR 422 EAT****.*
>
> *24. As for the words "in the public interest", inserted into section 43B(1) of the ERA by the 2013 Act, this phrase was intended to reverse the effect of* ***Parkins v Sodexho Ltd [2002] IRLR 109 EAT****, in which it was held that a breach of legal obligation owed by an employer to an employee under their own contract could constitute a protected disclosure. The public interest requirement does not mean, however, that a disclosure ceases to qualify for protection simply because it may also be made in the worker's own self-interest; see* ***Chesterton Global Ltd v Nurmohamed [2017] IRLR 837 CA*** *(in which the earlier guidance to this effect by the EAT (****[2015] ICR 920****) was upheld)."*

226. We were also directed to Kilraine v London Borough of Wandsworth 2018 ICR 1850, CA, in which the Court of Appeal held that 'information' and 'allegation' are not mutually exclusive categories of communication. Allegations can amount to disclosure of information depending on their

content and the surrounding context.

227. The test for determining whether the information threshold had been met is that the disclosure has to have "sufficient factual content and specificity such as is capable of tending to show" one of the five wrongdoings or deliberate concealment of the same. Clearly, the more the statement consists of unsupported allegation, the less likely it will be to qualify, but this is as a question of fact, not because of a rigid information/allegation divide.

228. The Court of Appeal in Kilraine also went on to stress that the word 'information' in S.43B(1) has to be read with the qualifying phrase 'tends to show' The belief has to be that the information in the disclosure tends to show the required wrongdoing, not just a belief that there is wrongdoing.

229. Counsel for the claimant reminded us that

"Reasonable belief" has both subjective and objective elements: the subjective element is that the worker must believe that the information disclosed tends to show one of the relevant failures, and the objective element is that this belief must be reasonable (see Phoenix House Ltd v Stockman [2017] ICR 84 (EAT) at para. 27, endorsing Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4 (EAT))."

In terms of the reasonableness of belief, the Court of Appeal held in Babula v Waltham Forest College [2007] IRLR 346 that whilst an employee claiming the protection of s.43B(1) must have a reasonable belief that the information he is disclosing tends to show one or more of the matters in that section, there is no requirement to demonstrate that the belief is factually correct. The belief may be reasonable even if it transpires that it is wrong. Whether the belief was reasonably held is a matter for the tribunal to determine.

230. In assessing the reasonableness of the worker's belief, the Tribunal is not restricted to reasons that were in the mind of the worker at the time. The worker's reasons are not of the essence, although the lack of any credible reason might cast doubt on whether the belief was genuine. However, since reasonableness is judged objectively, it is open to a tribunal to find that a worker's belief was reasonable on grounds which the worker did not have in mind at the time

231. The public interest test was considered by the Court of Appeal in Chesterton Global Ltd (t/a Chestertons) v Nurmohamed [2017] EWCA Civ 979. Upholding an employment tribunal's decision that the disclosure was a qualifying disclosure, the court gave the following guidance. The tribunal has to determine whether the worker subjectively believed at the time that the disclosure was in the public interest; and if so, whether that belief was objectively reasonable.

232. Belief in the public interest need not be the predominant motive for making the disclosure, or even form part of the worker's motivation. The statute uses the phrase "in the belief…" which is not same as "motivated by the belief…".

233. In Ibrahim v HCA International Ltd [2019] EWCA Civ 2007, the Court of Appeal held that a Claimant alleging whistleblowing must have the opportunity to give evidence directly on the point of whether they had a subjective belief that they were acting in the public interest at the time of making a disclosure. They can then be cross-examined and a tribunal will be able to evaluate the evidence and make findings as to subjective belief

and the reasonableness of that belief.

234. We were reminded that the ET has the power to reduce any award it may make in either a successful detriment or a dismissal claims where 'it appears to the tribunal that the protected disclosure was not made in good faith' (see. s.49(6A) and s.123(6A) ERA 1996).Counsel for the repondnet referred us to Street v Derbyshire Unemployed Workers' Centre 2005 ICR 97, CA, the Court of Appeal held at [41] and at [47] that where the predominant reason that a worker made a disclosure was to advance a grudge, or to advance some other ulterior motive, then he or she would not make the disclosure in good faith.
235. We were also referred to *Bachnak v Emerging Markets Partnership (Europe) Ltd* EAT 0288/05 the Appeal Tribunal upheld at [26] the decision of an employment tribunal that an employee who made disclosures "primarily … to strengthen his hand in negotiations for a new contract with the" employer had not acted in good faith. Further, the disclosures that were made after he was summoned to a meeting for copying documents without permission, or after his suspension but before dismissal, were "made to put pressure on the Respondent to dismiss him".

<u>Reason for Dismissal</u>

236. We were referred to Abernethy v Mott, Hay and Anderson [1974] ICR 323, Cairns LJ said this, at p. 330 B-C:

> "A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee."

237. We were also directed to Beatt v Croydon Health Services NHS Trust [2017] IRLR 748, Underhill LJ said this (at para. 30):

> "As I observed in Hazel v Manchester College [2014] EWCA Civ 72, [2014] ICR *989, (see para. 23, at p. 1000 F-H), Cairns LJ's precise wording was directed to the particular issue before the Court, and it may not be perfectly apt in every case; but the essential point is that the 'reason' for a dismissal connotes the factor or factors operating on the mind of the decision-maker which cause them to take the decision - or, as it is sometimes put, what 'motivates' them to do so…"*
>
> See also para. 94:
>
> ***"**I wish to add this. It comes through very clearly from the papers that the Trust regarded the appellant as a trouble-maker, who had unfairly and unreasonably taken against colleagues and managers who were doing their best to do their own jobs properly. I do not read the tribunal as having found that that belief was anything other than sincere, even though it found that it was unreasonable. But it is all too easy for an employer to allow its view of a whistleblower as a difficult colleague or an awkward personality (as whistleblowers sometimes are) to cloud its judgement about whether the disclosures in question do in fact have a reasonable basis or are made (under the old law) in good faith or (under the new law) in the public interest. Those questions will ultimately be judged by a tribunal, and if the employer proceeds to dismiss it takes the risk that the tribunal will take a different view about them. I appreciate that this state of affairs might be thought to place a heavy burden on employers; but Parliament has quite deliberately, and for understandable policy reasons, conferred a high level of protection on whistleblowers. If there is a moral from this very sad story, which has turned out*

so badly for the Trust as well as for the appellant, it is that employers should proceed to the dismissal of a whistleblower only where they are as confident as they reasonably can be that the disclosures in question are not protected (or, in a case where Panayiotou v Chief Constable of Hampshire Police [2014] IRLR 500 is in play, that a distinction can clearly be made between the fact of the disclosures and the manner in which they are made)".

Automatic unfair dismissal section 103 A Employment Rights Act 1986.

238. We were referred to *London Borough of Harrow v Knight* [2003] IRLR 140, EAT, the EAT held that there are four elements of a claim under S.47B(1) namely the claimant must have made a protected disclosure, he or she must suffer some identifiable detriment, the employer must have subjected the claimant that detriment by some act or deliberate failure to act and the act or deliberate failure to act must been done on the ground that the claimant made a protected disclosure.
239. The protected disclosure must materially influence, in the sense of being more than trivial influence, the employer's treatment of the individual concerned. We were also referred to the judgment of Mummery LJ in Kuzel v Roche Products Limited [2008] IRLR 530:

"56. I turn [from those general comments] to the special provisions in Part X of the 1996 Act about who has to show the reason or principal reason for the dismissal. There is specific provision requiring the employer to show the reason or principal reason for dismissal. The employer knows better than anyone else in the world why he dismissed the complainant. Thus, it was clearly for Roche to show that it had a reason for the dismissal of Dr Kuzel; that the reason was, as it asserted, a potentially fair one, in this case either misconduct or some other substantial reason; and to show that it was not some other reason. When Dr Kuzel contested the reasons put forward by Roche, there was no burden on her to disprove them, let alone positively prove a different reason.

57. I agree that when an employee positively asserts that there was a different and inadmissible reason for his dismissal, he must produce some evidence supporting the positive case, such as making protected disclosures. This does not mean, however, that, in order to succeed in an unfair dismissal claim, the employee has to discharge the burden of proving that the dismissal was for that different reason. It is sufficient for the employee to challenge the evidence produced by the employer to show the reason advanced by him for the dismissal and to produce some evidence of a different reason.

58. Having heard the evidence of both sides relating to the reason for dismissal it will then be for the ET to consider the evidence as a whole and to make findings of primary fact on the basis of direct evidence or by reasonable inferences from primary facts established by the evidence or not contested in the evidence.

59. The ET must then decide what was the reason or principal reason for the dismissal of the claimant on the basis that it was for the employer to show what the reason was. If the employer does not show to the satisfaction of the ET that the reason was what he asserted it was, it is open to the ET to find that the reason was what the employee asserted it was. But it is not correct to say, either as a matter of law or logic, that the ET must find that, if the reason was not that asserted by the employer, then it must have been for the reason asserted by the employee. That may often be the outcome in practice, but it is not necessarily so.

60. As it is a matter of fact, the identification of the reason or principal reason turns on direct evidence and permissible inferences from it. It may be open to the tribunal to find that, on a consideration of all the evidence in the particular case, the true reason for dismissal was not that advanced by either side. In brief, an employer may fail in its case of fair dismissal for an admissible reason, but that does not mean that the employer fails in disputing the case advanced by the employee on the basis of an automatically unfair dismissal on the basis of a different reason.

Ordinary unfair dismissal

240. It is for the employer to show the reason or the principal reason for dismissal. Once the employer has established a potentially fair reason for the dismissal under section 98(1) of ERA 1996 the tribunal must then decide if the employer acted reasonably in dismissing the employee for that reason.

241. Section 98(4) of ERA 1996 provides that, where an employer can show a potentially fair reason for dismissal:

> *"... the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) -*
>
> *(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
>
> *(b) shall be determined in accordance with equity and the substantial merits of the case.*

242. Both counsel addressed the question of what the tribunal panel should consider in their submissions. Counsel for the claimant submitted that the Burchall test had been approved to be of much wider application the purposes of section 98 (4) than just conduct dismissals. He submitted that with modifications to reflect the fact that the potentially fair reason relied on in this case was essentially an irretrievable breakdown in working relationships, the Tribunal can approach s.98(4) by considering these matters. Firstly, did the employer genuinely believe that there had been an irretrievable breakdown in working relationships? Secondly, did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case, and did it follow a reasonably fair procedure? Thirdly, did the employer have reasonable grounds for that belief?

243. If the answer to each of those questions is “yes”, the Employment Tribunal must then go on to decide whether the decision to dismiss the employee was within the band of reasonable responses, or whether that band fell short of justifying the termination of employment.

244. Counsel for the respondent submitted that the fixed approach to fairness suggested by the claimant’s counsel would fly in the face of the clear terms of the statute. She submitted that there is no checklist of items in SOSR cases before dismissal can be regarded as fair and directed us to Moore v Phoenix Product Developments Ltd UKEAT/0070/20/OO at [43-46]).

245. Counsel for the respondent referred us to the IDS handbook on unfair dismissal. *‘‘The employer is required to show only that the substantial reason for dismissal was a potentially fair one. Once the reason has been established, it is then up to the tribunal to decide whether the employer acted reasonably under S.98(4) in dismissing for that reason. As in all unfair dismissal claims, a tribunal will decide the fairness of the dismissal by asking whether the decision to dismiss fell within the range of reasonable responses that a reasonable employer might adopt. Depending on the circumstances, this may involve consideration of matters such as whether the employee was consulted, warned and given a hearing, and/or whether the employer searched for suitable alternative employment.”*

246. We accept that there is no checklist of items in trust and confidence cases. We must consider the words of the statute and decide whether the employer acted reasonably in all the circumstances which includes an assessment of whether or not dismissal fell within the range of reasonable responses of a reasonable employer might adopt.

Trust and confidence dismissals

247. We were referred to Ezsias v North Glamorgan NHS Trust [2011] IRLR 550 which confirms that there has to be a truly terminal breakdown of trust and confidence before such an argument can be used to substantiate the potentially fair reason of SOSR.
248. The claimant's counsel referred us to a number of other cases and also directed us to a passage in Harvey which summarises the position which we accept is a set out below

> *Harvey* suggests that the position is as follows (see Division D1 at para. [1915.02]):
>
> *"(1) Loss of trust should not be resorted to too readily as some form of panacea (**A v B**; **McFarlane**; see also the subsequent decision in **Z v A UKEAT/0380/13 (9 December 2013, unreported)**).*
>
> *(2) In particular, if there are specific allegations of misconduct the employer should rely primarily on those and be prepared to prove them in the normal way (a point made strongly by the Court of Appeal in Perkin in the parallel area of awkward personality).*
>
> *(3) However, in a strong enough case an allegation of (terminal) loss of trust may come within SOSR and justify dismissal (**Ezsias**), where arguably a vital factor was that the patient interest was suffering because of the dysfunctional nature of the hospital department).*
>
> *(4) Where this is the case, it may not be enough for the employer to establish merely the fact of that loss of trust because a tribunal may (not must) look into the background to that loss to consider the fairness of the dismissal in the light of all the facts (Sylvester).*
>
> *(5) In that context, it will be for the ET to consider what reasonable steps, if any, the employer had taken to try to resolve the problems that had arisen. In **Turner v Vestric Ltd [1980] IRLR 23, [1980] ICR 528**, the EAT said that the question was whether the employer had taken 'sensible, practical and genuine steps' to do so; this was cited and applied in **Matthews v CGT IT UK Ltd [2024] EAT 38 (25 March 2024, unreported)** where the EAT disapproved an attempt to strengthen this to a requirement to have taken 'all steps' and upheld an ET decision that there was nothing further that the employer could reasonably have done because the employee was so set on seeking retribution against the employer for what they saw as its unacceptable behaviour".*

249. Counsel for the respondent reminded us that the employment tribunal must consider the job in question held by dismissed employee when considering whether or not respondent is entitled to rely on some other substantial reason that is a breach breakdown of trust and confidence. We were directed to Cobley v Forward Technology Industries plc [2003] ICR 1050, CA. In Cobley LJ Mummery held at [21] that:

> '*Section 98(i)(b) focuses on the sufficiency of the reason to justify the dismissal of an employee "holding the position which the employee held". Mr Cobley held the most important executive position in FTI. In deciding whether there was a substantial reason to dismiss him from that position on a successful takeover different considerations would apply to him than to the case of a secretary or a storeman.'*

Contributory conduct

250. The basic award may be reduced where the tribunal 'considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such as it would be just and equitable to reduce or reduce further the amount of the award to any extent...'. In respect of other awards 'where the tribunal finds that the [act] was to any extent caused or contributed to by any action of the complainant, [the tribunal] shall reduce the amount of the compensatory award by such proportion as it considers just and equitable...'.
251. For the basic award (but not other awards), conduct which was not known to the employer and cannot have caused or contributed to the dismissal can still be taken into account .
252. To fall into this category, the claimant's conduct must be 'culpable or blameworthy'. Save in respect of the basic award, such conduct must cause or contribute to the claimant's dismissal, rather than its fairness or unfairness. Such conduct need not amount to gross misconduct.

Polkey reduction

253. A 'Polkey' deduction is the phrase used in unfair dismissal cases to describe the reduction in any award for future loss to reflect the chance that the individual would have been dismissed fairly in any event.
254. The tribunal must assess any Polkey deduction in two respects:1) If a fair process had occurred, would it have affected when the claimant would have been dismissed? And 2) What is the percentage chance that a fair process would still have resulted in the claimant's dismissal?
255. Where there is a significant overlap between the factors taken into account in making a Polkey deduction and when making a deduction for contributory conduct, the ET should consider expressly, whether in the light of that overlap, it is just and equitable to make a finding of contributory conduct, and, if so, what its amount should be. This is to avoid the risk of penalizing the claimant twice for the same conduct.

Conclusion.

256. We now consider how the relevant law applies to findings of fact using the issues list as our guide to ensure that we address all those points on which we are required to make finding.

Protected disclosures

257. For each protected disclosures we must consider whether a qualifying disclosure was made. That is was there disclosure of information that has a sufficient factual content that is capable of tending to show one of the five wrongdoings. Did the claimant have a reasonable belief (considering both the subjective and objective elements) that the information tends to show one of the relevant failures and did they have a reasonable belief that the disclosure is in the public interest.
258. Protected disclosure one has three parts. In relation to the conversation 25 January findings of fact were that no information was disclosed about

any potential wrongdoing. It cannot therefore amount to a protected disclosure.

259. Our finding of fact in relation to the emails that followed 25 January were that these did potentially provide information that could amount to a qualifying disclosure. However, we found that the claimant did not have a reasonable belief that the information tended to show one of the relevant failures. These emails cannot therefore amount to protected disclosures.

260. As for 3 February telephone conversation we have found that no information was provided. This could amount to a protected disclosure.

261. For protected disclosure 2, we have found that the claimant did provide sufficient information as she made reference to the gifting and potential bribery but that she did not have a reasonable belief that the information she provided tended to show any wrongdoing. To the contrary she concludes that she is satisfied. This is not a protected disclosure.

262. For protected disclosure three, we are satisfied that she does provide information which could amount to a qualifying disclosure however, we have found that she did not have a reasonable belief that the information did disclose any relevant wrongdoing. It cannot amount to a protected disclosure.

263. For protected disclosure 4 we find that she did provide relevant information and that she did have a reasonable belief that the information she provided indicated a potentially relevant wrongdoing. We find that protected disclosure 4 is indeed that. It amounts to protected disclosure.

264. We have then gone on to consider whether the claimant was subjected to any detriment as a result of the fourth protected disclosure.

<u>Detriments</u>

265. We have found that the following did not happen as a matter of fact . The claimant was not therefore subjected to any of these detriments. The matter simply did not happen in the way the claimant describes them.

(a) Her role was undermined by the First and Second Respondent in a telephone call on 31 January 2022 (3 February) as set out in paragraph 19 of the AGOC.

(c) The First and Second Respondent removed duties from C, including the search for the new premises around 17 February 2022, as set out at paragraphs 64 and 65 above.

(d) The Second Respondent began to be rude and argumentative towards the Claimant as set out at paragraph 67 AGOC.

(f) The First and Second Respondent failed to include the Claimant in rectifying issues on the website she had identified as set out at paragraph 68 AGOC.

(g) The Second Respondent verbally attacked and berated the Claimant ……at a meeting in a restaurant on 20 February 2022 as set out at paragraphs 70 – 78 AGOC.

(i) The First and Second Respondent contrived to ruin the Claimant's reputation and career as set out at paragraphs 70 - 81 and 86 AGOC.

(k) The First and Second Respondent failed to provide a reason for dismissal.

(l) The First and Second Respondent provided sham reasons for the Claimant's dismissal as set out at paragraph 83 AGOC.

(m) The First and Second Respondent conducted a sham investigation into the Claimant's points raised in her appeal letter of 14 March 2022 as set out at paragraph 84 AGOC

266. We have found that the following happened (in part) as a matter of fact, but we have found that they were not in any way related to the alleged protected disclosures. They relate to matters that predate the fourth disclosure. They are not detriment because of the fourth protected disclosure.

(b) The Second Respondent told her he had lost trust in her and that she was not the right person to take the First Respondent forward in a telephone call on 15 February 2022 as set out in paragraphs 62-63 of the AGOC.

We have found that second respondent did not say the claimant was not the right person to take the respondent's business forward. We have found that he did say that he had lost trust in her. We have found that this was because of the claimant's previous resignation. He was reacting entirely to an event that occurred in November before any of the alleged protected disclosures were made or contemplated. It was not in any way connected with the protected disclosures.

(e)The First and Second Respondent failed to invite the Claimant to the usual company meetings as set out at paragraph 68 AGOC

We have found that this did not occur. However, we have also identified that the exclusion the claimant complains of predated her first disclosure. It cannot therefore be in any way related to this disclosures even if it had happened which we found it did not

267. That then leaves two potential detriments which did occur

(h) The First and Second Respondent told the Claimant to resign on 22 February 2022 as set out at paragraphs 70 – 78 AGOC.

We have found that this did occur but its motivation was to try to protect the claimant's future employability. It had nothing whatsoever to do with the disclosures. It was triggered by the claimant's dismissal which was itself triggered, not by the alleged disclosures, but by what had been discovered about the claimant's conduct. Further, as we have found that only the fourth alleged protected disclosure can amount to disclosure and we have accepted the second respondent's evidence that the website issue was not even one of the matters he viewed as a "trap", this was not in his mind at all.

(j) did the Second Respondent dismiss the Claimant in the manner that he did (paragraph 70 – 81 GOC);

We have found that the second respondent did dismiss the claimant without notice or process. We have found that this was due to his lack of knowledge and understanding of the requirements of UK law. The lack of process relates to a dismissal which was nothing whatsoever to do with

any protected disclosures and certainly not to do with the website issues. It was because of what had been discovered about the claimant's conduct. The manner of dismissal was utterly unconnected with the website issue being reported

Unfair dismissal

268. We have also found that the dismissal of the claimant had nothing whatsoever to do with any disclosure about a website. It was because of the claimant's conduct between the 20th and 22nd of February and what the second respondent discovered about her conduct generally.
269. We conclude that the reason for dismissal was because the respondent had lost trust and confidence in the claimant. However, we have found that while this was a process that had begun in November 2021 the decision to dismiss was triggered by discovery of the claimant's conduct. We therefore find that the principal reason for dismissal occurring when it did was conduct and not some other substantial reason.
270. Conduct is a potentially fair reason for dismissal, and we must then determine whether the employer acted reasonably in dismissing the employee for that reason. In this case the employer failed to follow any process at all. The claimant was simply summarily dismissed. She was given no opportunity to even understand the allegations against her also put her side of the case.
271. The appeal conducted by Mr Cairns cannot rectify this procedural defect. It was not a complete rehearing of the matter, and it was too little too late. We conclude that the dismissal was procedurally unfair. We have therefore gone on to consider whether any procedure of made any difference or whether she any reduction in compensation due to the claimant's conduct.

Contributory conduct/Polkey reduction

272. We have considered whether or not a fair procedure would have made any difference in this case. It would have allowed the claimant to put her side of matters before she was dismissed. However, given our findings as to her conduct we find that dismissal would ultimately have resulted and at best the claimant would have remained employed for may be a further month.
273. While that is our view, we are mindful that tribunal should be careful not to have any overlap between a Polkey reduction and contributory conduct. In the circumstances of this case we feel it is more appropriate to focus on contributory conduct.
274. We have found that the facts which led to the claimant's dismissal had occurred. The claimant had threatened to resign unless she received a substantial pay rise. The claimant had lied to colleagues about what occurred in the meeting between herself and the second respondent on 20 January. We accept that the second respondent was only aware of the fact that she had misrepresented the position to one colleague at the time he dismissed her. The claimant had unsettled another senior employee causing her to have concerns about her future with the business. The claimant had lied to colleagues about working from home and had lied to her direct report about training. She had badmouthed the chief executive of the group when she was the managing director of the UK subsidiary.
275. We conclude that her conduct was culpable and blameworthy. We

conclude that it was her conduct that caused her dismissal. We are aware that contributory conduct does not need to be the same as gross misconduct but on these facts we would characterise lying to other staff about the actions of the group chief executive to be gross misconduct given her position.

276. We conclude that any compensatory award would therefore be reduced by 100% to account for this. We also consider that the claimant's conduct prior to dismissal is such as it will be just and equitable to reduce the amount of any basic award also by hundred percent.

277. The claims for whistleblowing detriment and automatic unfair dismissal do not succeed. The claim for ordinary unfair dismissal does succeed. There was a fair reason for dismissal but no appropriate procedure for the dismissal which was procedurally unfair. However, the claimant's conduct is such that we conclude that the basic and compensatory award would be reduced by 100%.

_____F Mclaren _____

Employment Judge McLaren

_____

Date 13 November 2024